RETURN

(63)

To an ADDRESS of the HOUSE OF COMMONS, dated the 5th May, 1891;—For copies of all correspondence, petitions, memorials, briefs and factums, and of any other documents submitted to the Privy Council in connection with the abolition of Separate Schools in the Province of Manitoba by the Legislature of that Province; also copies of Reports to and Orders in Council thereon; also copies of an Act or Acts of said Legislature abolishing said Separate Schools or modifying in any way the system existing prior to 1890.

By order.

GEO. E. FOSTER,

For Secretary of State.

CONTENTS.

No. 1.

(*Translation.*)

MONTREAL, 23rd March, 1891.

SIR,—I send you enclosed a Petition signed by the Catholic Episcopacy of the Dominion of Canada, and beg that you will lay the same before His Excellency the Governor General in Council.

I am confident that you will give your whole support to this Petition and commend it to your colleagues when presenting it to them.

Several of the venerable prelates, being unable to sign themselves, authorized certain of their fellow-bishops to do so for them, as you will see by the papers hereunto annexed.

Your obedient servant,

ALEX.,

Archbishop of St. Boniface, O.M.I.

Honourable J. A. CHAPLEAU, M.P., Secretary of State, Ottawa.

A.

Telegram.

BELLEVILLE, ONT., March 23, 1891.

His Grace Archbishop Taché, St. Matthew Street, Montreal.

Have not seen document; you may, however, attach my name.

J. FARRELLY.

B.

MONTREAL, March 16, 1891.

I hereby certify that by special authority from their Lordships the Right Rev. Monseigneur Grandin, Bishop of Saint Albert, and Monseigneur Isidore Clut, Bishop of Arindèle, I have affixed their signatures to the petition addressed to His Excellency the Governor General in Council *re* Manitoba Catholic Schools, &c., &c.

ALEX.,

Archbishop of St. Boniface, O.M.I.

C.

ARCHBISHOP'S HOUSE, HALIFAX, N.S., March 17, 1891.

I hereby certify that by special authority from their Lordships the Bishops of St. John, Charlottetown, Antigonish and Irina, I have this day affixed their signatures to the petition of His Grace Archbishop Taché to His Excellency the Governor General in Council.

C. O'BRIEN,

Archbishop of Halifax.

D.

Telegram.

NEW WESTMINSTER, B.C., 15th March, 1891.

To Rev. Archbishop Taché, General Hospital, Montreal:—

Consenting to sign.

BISHOP DURIEU.

E.

VICTORIA, B.C., 11th March, 1891.

To Archbishop Taché, General Hospital, St. Matthew Street, Montreal:—

I willingly give my name to petition.

J. N. LEMMENS.

To His Excellency the Governor General in Council:—

The petition of the Cardinal Archbishop of Quebec, and of the Archbishops and Bishops of the Roman Catholic Church in the Dominion of Canada, subjects of Her Gracious Majesty the Queen,—

Humbly sheweth:—That the seventh legislature of the Province of Manitoba, in its third session assembled, has passed an Act intituled, "An Act respecting the Department of Education," and another Act, to be cited "The Public School Act," which deprive the Roman Catholic minority of the province of the rights and privileges they enjoyed with regard to education;

That during the same session of the same parliament there was passed another Act, being Fifty-three Victoria, chap. xiv., to the effect of abolishing the official use of the French language in the parliament and courts of justice of the said province;

That the said laws are contrary to the dearest interests of a large portion of the loyal subjects of Her Majesty;

That the said laws cannot fail to grieve, and in fact do afflict, at least the half of the devoted subjects of Her Majesty;

That the said laws are contrary to the assurances given, in the name of Her Majesty, to the population of Manitoba, during the negotiations which determined the entry of the said province into Confederation;

That the said laws are a flagrant violation of the British North America Act, 1867, of the Manitoba Act, 1870, and of the British North America Act, 1871; that your petitioners are justly alarmed at the disadvantages, and even the dangers, which would be the result of a legislation forcing on its victims the conviction that public good faith is violated with them, and that advantage is taken of their numerical weakness, to strike at the Constitution under which they are so happy to live.

Therefore, your petitioners humbly pray your Excellency in Council to afford a remedy to the pernicious legislation above mentioned, and that in the most efficacious and just way.

And your petitioners will, as in duty bound, ever pray.

MONTREAL, 6th March, 1891.

E. A. Card. Taschereau, Arch. of Quebec; Alex., Arch. of St. Boniface; C. O'Brien, Arch. of Halifax and 24 others.

EDOUARD CH., Arch. of Montreal;
JOHN WALSH, Arch. of Toronto;
JEAN, ARCH. of Leontopolis;
(*b*) VITAL, J., Bishop of St. Albert;
(*c*) PETER MCINTYRE, Bishop of Charlottetown;
L. F., Bishop of Three Rivers;
(*c*) J. CAMERON, Bp. of Antigonish;
(*d*) PAUL DURIEU, O.M.I., Bish of New Westminster;
THOMAS JOSEPH, Bp. of Hamilton;
(*e*) J. N. LEMMENS, Bp. of Vancouver;
ANDRÉ ALBERT, Bp. of St. Germain de Rimouski;
(*c*) J. C. MCDONALD, Tit. Bp. of Irina;
J. THOMAS, Arch. of Ottawa;
(*a*) J. FARRELLY, Administrator, Diocese of Kingston;
(*c*) JOHN SWEENY, Bishop of St. John;
(*b*) ISIDORE CLUT, O.M.I., Bishop of Arindèle;
T. O'MAHONY, Bishop of Eudocie;
ANTOINE, Bp. of Sherbrooke.
L. Z., Bishop of St. Hyacinthe;
N. ZEPHIRIN, Bp. Cythère, Vic. Apost. of Pontiac;
ELPHÈGE, Bishop of Nicolet;
(*f*) RICHARD A. O'CONNOR, Bishop of Peterboro';
(*g*) ALEXANDER MACDONELL, Bishop of Alexandria;
(*h*) DENNIS O'CONNOR, Bp. of London;
(*i*) N. DOUCET, Priest, V.G., Prot. Apost. Administrator of the Diocese of Chicoutimi, during the absence of Mgr. Bégin, in Europe.

No. 2.

REPORT *of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 4th April*, 1891.

The Committee of the Privy Council have had under consideration the annexed Report, dated 21st March, 1891, from the Minister of Justice upon the two Acts of the following titles passed by the Legislature of the Province of Manitoba at its session held in the year 1890, which Acts were received by the Secretary of State on the 11th April, 1890, namely:

Chapter 37—"An Act respecting the Department of Education," and

Chapter 38—"An Act respecting Public Schools."

The Committee submit the same for approval, and they advise that the Secretary of State be authorized to forward a copy of this Minute, together with the Report of the Minister of Justice, to the Lieutenant Governor of Manitoba.

JOHN J. McGEE, *Clerk Privy Council.*

DEPARTMENT OF JUSTICE, CANADA, 21st March, 1891.

To His Excellency the Governor General in Council:

The undersigned has the honour to report upon the two Acts of the following titles passed by the Legislature of the Province of Manitoba at its session held in the year 1890, which Acts were received by the Honourable the Secretary of State on the 11th April, 1890:

Chapter 37—"An Act respecting the Department of Education," and

Chapter 38—"An Act respecting the Public Schools."

The first of these Acts creates a Department of Education, consisting of the Executive Council, or a Committee thereof, appointed by the Lieutenant Governor in Council, and defines its powers. It also creates an Advisory Board, partly appointed by the Department of Education, and partly elected by teachers, and defines its powers. Also,

The "Act respecting Public Schools" is a consolidation and amendment of all previous legislation in respect to Public Schools. It repeals all legislation which created and authorized a system of Separate Schools for Protestants and Roman Catholics. By the Acts previously in force either Protestants or Roman Catholics could establish a school in any school district, and Protestant ratepayers were exempted from contribution for the Catholic Schools, and Catholic ratepayers were exempted from contribution for Protestant Schools.

The two Acts now under review purport to abolish these distinctions as to the schools, and these exemptions as to ratepayers, and to establish instead a system under which public schools are to be organized in all the school districts, without regard to the religious views of the ratepayers.

The right of the Province of Manitoba to legislate on the subject of education is conferred by the Act which created the Province, viz.: 32-33 Vict., chapter 3 (The Manitoba Act), section 22, which is as follows:—

"22. In and for the Province of Manitoba the said Legislature may exclusively make laws in relation to education, subject to the following provisions:—

"(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the Province at the Union.

"(2) An appeal shall lie to the Governor General in Council from any act or decision of the Legislature of the Province, or of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

"(3) In case any such Provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor General in Council, on

any appeal under this section, is not duly executed by the proper Provincial authority in that behalf; then, and in every such case, and as far only as the circumstances of each case require, the Parliament may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section."

In the year 1870, when the "Manitoba Act" was passed, there existed no system of education established or authorized by law; but at the first session of the Provincial Legislature, in 1871, an "Act to establish a system of Education in the Province" was passed. By that Act the Lieutenant Governor in Council was empowered to appoint not less than ten nor more than fourteen persons to be a Board of Education for the Province, of whom one-half were to be Protestants and the other half Catholics, with one superintendent of Protestant and one superintendent of Catholic schools. The Board was divided into two sections, Protestant and Catholic, each section to have under its control and management the discipline of the schools of its faith, and to prescribe the books to be used in the schools under its care which had reference to religion or morals. The moneys appropriated for education by the Legislature were to be divided equally, one moiety thereof to the support of Protestant schools, and the other moiety to the support of Catholic schools.

By an Act passed in 1875, the board was increased to twenty-one, twelve Protestants and nine Roman Catholics; the moneys voted by the Legislature were to be divided between the Protestant and Catholic schools, in proportion to the number of children of school age in the schools under the care of Protestant and Catholic sections of the board respectively.

The Act of 1875 also provided that the establishment in a school district of a school of one denomination, should not prevent the establishment of a school of another denomination in the same district.

Several questions have arisen as to validity and effect of the two Statutes now under review, among those are the following:—

It being admitted that "no class of persons" (to use the expression of the "Manitoba Act") had, "by law," at the time the Province was established, "any right or privilege with respect to denominational (or any other) schools." Had "any class of persons" any such right or privilege with respect to denominational schools, "by practice," at that time? Did the existence of separate schools for Roman Catholic children, supported by Roman Catholic voluntary contributions, in which their religion might be taught and in which text-books suitable for Roman Catholic schools were used, and the non-existence of any system by which Roman Catholics, or any others, could be compelled to contribute for the support of schools, constitute a "right or privilege" for Roman Catholics "by practice," within the meaning of the Manitoba Act? The former of these, as will at once be seen, was a question of fact, and the latter a question of law based on the assumption which has since been proved to be well founded, that the existence of separate schools at the time of the "Union" was the fact on which the Catholic population of Manitoba must rely as establishing their "right or privilege" "by practice." The remaining question was whether, assuming the foregoing questions, or either of them, to require an affirmative answer, the enactments now under review, or either of them, affected any such "right or privilege"?

It became apparent at the outset that these questions required the decision of the judicial tribunals, more especially as an investigation of facts was necessary to their determination. Proceedings were instituted with a view to obtaining such a decision, in the Court of Queen's Bench, of Manitoba, several months ago, and in course of these proceedings the facts have easily been ascertained, and the two latter of the three questions above stated were presented for the judgment of that Court, with the arguments of counsel for the Roman Catholics of Manitoba on the one side, and of counsel for the Provincial Government on the other.

The Court has practically decided, with one dissentient opinion, that the Acts now under review do not "prejudicially affect any right or privilege with respect to denominational schools" which Roman Catholics had by "practice at the time of

the Union," or in brief, that the non-existence, at that time, of a system of public schools and the consequent exemption from taxation for the support of public schools and the consequent freedom to establish and support separate or "denominational" schools did not constitute a "right or privilege" "by practice" which these Acts took away.

An appeal has been asserted and the case is now before the Supreme Court of Canada, where it will, in all probability, be heard in the course of next month.

If the appeal should be successful these Acts will be annulled by judicial decision, the Roman Catholic minority in Manitoba will receive protection and redress. The Acts purporting to be repealed will remain in operation, and those whose views have been represented by a majority of the legislature cannot but recognize that the matter has been disposed of with due regard to the constitutional rights of the province.

If the legal controversy should result in the decision of the Court of Queen's Bench being sustained the time will come for Your Excellency to consider the petitions which have been presented by and on behalf of the Roman Catholics of Manitoba for redress under sub-section (2) and (3) of section 22 of the "Manitoba Act," quoted in the early part of this report, and which are analagous to the provisions made by the "British North America Act," in relation to the other provinces.

Those sub-sections contain in effect the provisions which have been made as to all the provinces and are obviously those under which the constitution intended that the Government of the Dominion should proceed if it should at any time become necessary that the Federal powers should be resorted to for the protection of a Protestant or Roman Catholic minority against any Act or decision of the Legislature of the Province, or of any provincial authority, affecting any "right or privilege" of any such minority "in relation to education."

Respectfully submitted,

JNO. S. D. THOMPSON, *Minister of Justice.*

No. 3.

GOVERNMENT HOUSE, WINNIPEG, 10th April, 1890.

SIR,—I have the honour to transmit herewith the Memorial and Petition to His Excellency the Governor General in Council, of the Catholic Section of the Board of Education in and for the Province of Manitoba, signed by His Grace the Archbishop of St. Boniface, as President of the Catholic Section of the Board of Education, and by T. A. Bernier, Esq., Superintendent of Education for the Catholic Section, making certain representations upon and praying for the disallowance of two Bills passed during the Third Session of the Seventh Legislature of this Province, which were assented to by me on the Thirty-first ultimo, said Bills being intituled:—

"An Act respecting the Department of Education" and

"An Act respecting Public Schools."

I have, &c.,

JOHN SCHULTZ.

The Honourable the Secretary of State, Ottawa.

To His Excellency the Governor General in Council:—

The Petition of the Catholic Section of the Board of Education in and for the Province of Manitoba, doth hereby most respectfully represent; That

Whereas previous to and at the time of the union there existed by practice in the territory, which now forms the Province of Manitoba, a system of denominational schools.

Whereas the maintenance of such system was made a condition of the union by clause 7 of the Bill of Rights upon which such union was negotiated.

Whereas, thereafter the Legislature of the Province of Manitoba has established a system of denominational schools which has been in existence since the union up to this year without being questioned or complained of.

Whereas the existence of such a system of denominational schools by practice previous to and at the time of the union, and by law since the union, has created rights and privileges in matter of education to Catholic and Protestant denominations alike.

Whereas a part of the protection afforded to all by clause 93 of the British North America Act, 1867, it has been enacted by clause xxii of the Manitoba Act, that:

"XXII. In and for the Province, the said Legislature may exclusively make laws in relation to education, subject and according to the following provisions:

"(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the Union.

"(2) An appeal shall lie to the Governor General in Council from any act or decision of the Legislature of the province, or of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education;"

Whereas two bills respectively intituled "An Act respecting the Department of Education." "An Act respecting Public Schools," have been adopted by the Legislature of the Province of Manitoba, at the session closed on the 31st day of March, A.D. 1890, and whereas such legislation has prejudicially affected the rights and privileges of the Catholic minority of this Province with respect to Catholic schools, inasmuch as by said Acts the said Catholic schools of this Province are wiped out.

The Catholic section of the Board of Education in and for the Province of Manitoba, most respectfully and earnestly pray His Excellency the Governor General in Council, that said last mentioned Acts be disallowed to all intents and purposes, and your petitioners will ever pray.

ALEX., Archbishop of St. Boniface, O.M.I.,
President of the Catholic Section of Board of Education.

T. A. BERNIER,
Department of Education for the Catholic Section.

WINNIPEG, 7th day of April, 1890.

OTTAWA, 26th April, 1890.

The undersigned, respectively Members of the Senate and House of Commons of Canada, fully endorse the contents of the present memorial, and earnestly join in the prayer therein contained.

A. A. LARIVIÈRE, *M.P. for Provencher, Man.*

M. A. GIRARD, Senator.

No. 4.

GOVERNMENT HOUSE, WINNIPEG, March 31st, 1890.

SIR,—I have the honour to transmit herewith, copies of certain representations made to me by Honourable James E. P. Prendergast, M.P.P. for Woodlands, on behalf of the present M.P.P.'s for Carillon, Cartier, LaVerandrye, Morris, St. Boniface, and himself, regarding certain Bills, viz.:—

"An Act to provide that the English language shall be the official language of the Province of Manitoba"; "An Act respecting Public Schools"; and "An Act respecting the Department of Education," passed during the Third Session of the Seventh Provincial Legislature, to which assent was given this day by me.

I have, etc.,
JOHN SCHULTZ, *Lieutenant-Governor.*

The Honourable the Secretary of State, Ottawa.

WINNIPEG, 27th March, 1890.

SIR,—On behalf of the honourable members for Carillon, Cartier, La Verandrye, Morris, and St. Boniface, and of myself, I beg leave to respectfully represent to Your Honour that the Legislative Assembly, at this present Session, being the third of the Seventh Legislature, has passed a Bill intituled, "An Act to provide that the English language shall be the official language of the Province of Manitoba," and to most humbly submit that the said Bill is *ultra vires*, for reasons more fully set forth in the memorandum hereto annexed.

I have the honour to be, sir, your most humble servant,

JAMES E. P. PRENDERGAST, *Member for Woodlands.*

To His Honour the Honourable JOHN SCHULTZ, Lieutenant Governor of Manitoba, etc., etc., etc., Government House, Winnipeg.

MEMORANDUM respecting a Bill, intituled, "An Act to provide that the English language shall be the official language of the Province of Manitoba."

It is submitted that Section 133 of "The British North America Act, 1867," which applies to the Parliament of Canada and the Legislature of Quebec, is similar to, and drafted in the same words (*mutatis mutandis*) as clause 23 of "The Manitoba Act applying to the Legislature of Manitoba, and that any interpretation attaching to the former should also attach to the latter."

The British North America Act, 1867. Section 133 of the above Act reads as follows:—

"Either the English or the French language may be used by any person in the debates of the House of Parliament of Canada and of the House of the Legislature of Quebec, and both these languages shall be used in the respective records or journals of those Houses, and either of those languages may be used by any person in any pleading or process. The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both languages."

The spirit which has presided to the enacting of the above clause is fully illustrated by the reports of the debate on Confederation.

Honourable Mr. Evanturel (page 943), says: "I wish to put a question to the Government. I acknowledge that if I confined myself to consulting my own ideas I should not put this question, but I do so in order to meet the wishes of several of my friends, both within this House and beyond its precincts. Those friends have expressed alarm in relation to one of the clauses of the resolutions, and have requested me to ask an explanation from the Honourable Attorney-General for Upper Canada as to the interpretation of that clause. I have therefore to ask him whether article 46 of the resolutions, which states that both the English and French language may be employed in the general Parliament and its proceedings, and in the local Legislature of Lower Canada is to be interpreted: "As placing the use of the two languages on an equal footing" in the Federal Parliament? In stating the apprehensions entertained by certain persons on this subject, I hope the Government will not impute to me any hostile intention, and will perceive that the course I adopt is to their interest, as it will give them an opportunity of dissipating the apprehensions in question." (Hear, hear.)

Honourable Attorney-General Macdonald answers as follows:—

"I have very great pleasure in answering the question put to me by my honourable friend for the County of Quebec. I may state that the meaning of one of the resolutions adopted by the Conference is this: That the right of the French Canadian members as to the status of their language, in the Federal Legislature, should be "precisely the same as they now are in the Provincial Legislature of Canada in every possible respect." I have still further pleasure in stating that the moment this was mentioned in Conference, the members of the deputation from the Lower Provinces unanimously stated that it was right and just, and without one dissentient voice gave their adhesion to the reasonableness of the proposition, that the status of the French language as regards "the procedure in Parliament, the printing of

measures and everything of that kind," should precisely be the same as it is in this Legislature."

It is admitted that the only thing promised after all in the above by the Honourable the Attorney General for Upper Canada is that the French language would be placed in the Federal Parliament on the same footing it occupied *then*, that is, under the "Union Act."

It must be equally admitted that under the "Union Act," as originally drafted, the English language alone could be used in Parliament, and that whilst, by 11 and 12 Vic. (Imperial), the two languages were subsequently put on a par, yet, there was nothing in this amending Act making its object indefeasible, that is to say, that the use of the French language, although introduced was yet left, as to its own continuance, to the will of the majority.

Having those facts in mind, the above declarations of the Attorney General for Upper Canada were not considered sufficient, and at the next page of the Debates, Hon. (now Sir) A. A. Dorion is reported as saying:

"If to-morrow the Legislature chooses to vote that no other but the English language should be used in our proceedings, it might do so, and thereby forbid the use of the French language. There is, therefore, no guarantee for the continuance of the use of the language of the majority of the people of Lower Canada, but the will and forbearance of the majority of Parliament." To which the Hon. Mr. Macdonald replies: "I desire to say that I agree with my honourable friend that, as it stands just now, the majority governs, but *in order to cure this* it was agreed at the Conference to embody the provision in the Imperial Act. This is proposed by the Canadian Government for fear an accident might arise subsequently, and it was assented to by the deputation for each Province that the use of the French language should form *one of the principles upon which the Confederation would be established,* and that its use as at present should be guaranteed by the Imperial Act."

To the above declarations, affecting more the Federal Parliament, Honourable Attorney-General Cartier adds further declarations affecting the Province of Quebec, at the same page of the Debates. He is reported as saying:—

"I will add that it was also necessary to protect the English minority in Lower Canada with respect to the use of their language. The members of the Conference were desirous that *it should not be in the power of the majority to decree the abolition of the English language in the Local Legislature of Lower Canada, any more than it will be in the power of the Federal Legislature to do so with respect to the use of the French language.*"

It is submitted that the following conclusions may legitimately be drawn from the above.

(1) That the official use of their language was solemnly guaranteed to the English-speaking minority of the Province of Quebec in the Local Legislature.

(2) That this guarantee was an indefeasible one, or (in the words of Hon. Mr. Cartier) "That it would not be in the power of the majority to decree the abolition of the English language."

(3) That this privilege of the minority should not be interpreted in its narrowest sense, but (in the words of Mr. Evanturel) as placing the use of the two languages on an "equal footing," or, again, (in the words of Hon. Mr. Macdonald) "as applying to the procedure in Parliament," the printing of "measures and everything of that kind," that all the phrases in the said section of the B. N. A. Act, 1867, having as joint subjects the Federal Parliament and the Legislature of Quebec, all the declarations quoted as to the former must necessarily apply to the latter and *vice versa.*

Amendments to Provincial Constitutions.

In case it should be contended that the Legislature of Quebec has power to decree the abolition of the official use of the English language, by virtue of sub-clause one of clause 92 of the B. N. A. Act, 1867, it is respectfully submitted that the words "the Constitution of the Province," used in the said sub-clause, apply

only to such matters as are mentioned and provided for in Division five (v) of the said Act, headed "V.—*Provincial Constitutions.*" "And that the dual language claim being not contained in the said division, it is beyond the power of the Legislature of Quebec to amend it."

The Manitoba Act.

It is respectfully submitted that inasmuch as clause xxiii of the Manitoba Act is an absolute reproduction (*mutatis mutandis*) of clause 133 of the B. N. A. Act, 1867, the standing of the French language in Manitoba is the same as that of the English language in Quebec, and that all privileges and disabilities in connection with the latter are privileges and disabilities in connection with the former.

The B. N. A. Act, 1871.

It is further respectfully submitted that even had the Legislature of Quebec power to repeal the dual language clause of the B. N. A. Act, 1867, the Legislature of Manitoba is stopped from altering the provisions of the Manitoba Act, by 34 of 35 Vic., Cap. 28 (Imperial), also known as "The B. N. A. Act, 1871," section 6 of which reads as follows: "Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last mentioned Act (The Manitoba Act), subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the certification of *electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.*"

A Precedent.

It is further respectfully submitted, that in 1879, Hon. Mr., now Judge, Walker, then Attorney General of Manitoba, introduced in the Legislature a bill to abolish the printing in French of all public documents except the Statutes. The journals of that year show that the said Bill was read a first, second and third time, but the Schedule of Acts assented to at the close of the session shows that said Bill is not therein included, and that it was not sanctioned.

Humbly submitted,
JAMES E. P. PRENDERGAST, *M. P P. for Woodlands.*

LEGISLATIVE ASSEMBLY OF THE PROVINCE OF MANITOBA,
WINNIPEG, 28th March, 1890.

SIR,—On behalf of the members for Carillon, Cartier, La Verandrye, Morris and St. Boniface, as well as in my own name, I beg to represent respectfully to your Honour, that the Legislative Assembly has passed during its present session, amongst others, two bills, respectively intituled "An Act respecting the Department of Education" and "An Act respecting Public Schools," and to submit most humbly that the said Bills are *ultra vires* for reasons more fully set forth in the memorandum herewith enclosed.

I have the honour to be, sir, your most respectful servant,
JAMES E. P PRENDERGAST, *M. P. P. for Woodlands.*

His Honour the Hon. JOHN SCHULTZ,
Lieut. Governor, etc., etc., Government House, Winnipeg.

Memorandum, respecting a Bill intituled: "An Act respecting the Department of Education" and a Bill intituled: "An Act respecting Public Schools."

It is respectfully submitted that the Bills above mentioned are and constitute a gross and direct violation of the rights and privileges guaranteed to the Roman

Catholic minority of Her Majesty's subjects in the Province of Manitoba by section 93 of "The British North America Act, 1867" and section 22 of "The Manitoba Act." It is submitted that the first sub-clause of said section 22 of "The Manitoba Act" recognizes the *law* of *practice* followed prior to Union, as a source of indefeasible rights and privileges with respect to denominational schools. By the practice followed, the Roman Catholic denomination and in fact all the religious denominations known in the country, then enjoyed the following privileges:—

(1) They each had their denominational schools, there being in fact then no other schools than denominational schools in the country. (2) Each denomination (whether by their clergy, laymen, or otherwise) had the privilege of determining the curriculum of the course of studies to be followed in their respective schools so that the convictions and consciences of the parents were not violated by their children. (3) The practice, the general practice, was that each denomination supported its own schools.

The above practice is perfectly supported and illustrated by letters from the respective Boards of the Roman Catholic, Episcopalian, and Presbyterian denominations, as reproduced in Mr. H. T. Hind's report of the Red River Expedition, in the chapter concerning education. Whilst recognizing the supreme right of the Legislative Assembly of voting aids and subsidies, it is further submitted that prior to Union, the only monies spent for public purposes and which could in any sense be considered as public monies, were those of the Honourable Hudson Bay Company, and that it was the practice for said Company to grant yearly certain sums to the three denominations named, for their mission work, a most important part of which was their educational work. It is respectfully submitted that the said Bill respecting the Department of Education is, considered in its whole and more particularly by sections, determining the powers of, and creating the Department of Education and the Advisory Board, in violation of the rights and privileges above mentioned, and so for the said Bill respecting Public Schools, particularly by sections six, seven and eight; and by chapters headed "Compulsory Education" and "Penalties and Prohibitions" and "School Assessment." It is further respectfully submitted that by sub-clause 3 of clause 93 of "The British North America Act, 1867," and by sub-clause 2 of clause 22 of "The Manitoba Act," all Acts passed after the Union authorizing separate or denominational schools, are also recognized as a source of indefeasible rights and privileges.

That the said Bills passed during the present Session are also in this respect in violation of such rights and privileges, is evident from the fact that the said Bills expressly upset the "Manitoba School Act" now in force, and the denominational schools established thereunder, and substitute in lieu of the latter non-sectarian public common schools.

All of which is most respectfully submitted.

JAMES E. P. PRENDERGAST, M.P.P. for Woodlands.

No. 5.

WINNIPEG, April 14, 1890.

SIR,—I have the honour to transmit to you herewith enclosed, for consideration by His Excellency the Governor-General in Council, the Memorial of certain members of the Legislative Assembly of the Province of Manitoba, concerning two Acts respectively intituled "An Act respecting the Department of Education" and "An Act respecting Public Schools," passed by the Seventh Legislature of the said Province at their Third and now last Session.

I have the honour to be, sir, your most obedient servant,

JAMES E. P. PRENDERGAST,
A Member of the Legislative Assembly of the Province of Manitoba.

To the Honourable the Secretary of State for Canada.

To the Right Honourable Sir Frederick Arthur Stanley, Baron Stanley of Preston, in the County of Lancaster, in the Peerage of Great Britain, Knight Grand Cross of the Most Honourable Order of the Bath, Governor General of Canada, &c., &c., &c.

MAY IT PLEASE YOUR EXCELLENCY:

The petition of the undersigned dutiful subjects of Her Most Gracious Majesty and Members of the Legislative Assembly of the Province of Manitoba, most humbly showeth:—

That the seventh Legislature of the Province of Manitoba, in its third Session which opened on the thirtieth day of January, A.D. 1890, and prorogued on the thirty-first day of March of the same year, has passed, amongst others, two Acts respectively intituled "An Act respecting the Department of Education," a copy of which is shown in Appendix "A" hereto attached, and "An Act respecting Public Schools," a copy of which is shown in Appendix "B" also hereto attached.

That the said Act intituled "An Act respecting the Department of Education," although passed by the said Legislature as aforesaid, did not receive the approval of any of the members (whether of the Roman Catholic or Protestant persuasion) belonging to Her Majesty's Loyal Opposition in the said Legislative Assembly, as shown by a copy of the Journals of the House contained in Appendix "C" hereto attached, but, on the contrary, received the reproval of all the members of Her Majesty's said Loyal Opposition, except that of Mr. Lagimodiere, a Roman Catholic and member for La Verandrye, who was detained from his parliamentary duties through serious illness prevailing in his family. And that the said Act intituled "An Act respecting Public Schools," although passed by the said Legislative Assembly as aforesaid, did not receive the approval of any of the members (whether of the Roman Catholic or Protestant persuasion) belonging to Her Majesty's Loyal Opposition in the said Legislative Assembly, but, on the contrary, received the reproval of all of the said members, as again shown by the copy of the Journals of the House contained in Appendix "C" hereto attached.

That the said Bills violate the sacred and constant rights of Her Majesty's Roman Catholic subjects of the Province of Manitoba, in relation to education; and that, for reasons more fully set forth in Appendix "D" hereto attached, the said Bills are *ultra vires*, and have been passed in defiance of the Imperial Parliament under whose sanction the British North America Act, 1867, and the British North America Act, 1871 (34-35 Vic., chap. 28), were enacted.

Your Petitioners, therefore, humbly pray that Your Excellency may be pleased to take such action and grant such relief and remedy as to Your Excellency may seem meet and just.

And Your Petitioners, as in duty bound, shall ever pray.

THOMAS GELLEY, M.P.P. for Cartier.
WM. LAGINODIERE, M.P.P. for La Verandrye.
ERNEST J. WOOD, M.P.P for Cypress.
ROVER MARION, M.P.P. for St. Boniface.
JAMES PRENDERGAST, M.P.P. for Woodlands.
R. E. O'MALLEY, M.P.P. for Lorne.
MARTIN JEROME, M.P.P. for Carillon.
A. F. MARTIN, M.P.P. for Morris.

WINNIPEG, 14th April, 1890.

The undersigned, respectively members of the Senate and House of Commons of Canada, fully endorse the contents of the present memorial, and earnestly join in the prayer therein contained.

A. A. LARIVIERE, M.P. for Provencher.
M. A. GIRARD, Senator.

APPENDIX "A."

No..... BILL. 1890.

An Act respecting the Department of Education.

[*Assented to 31st March*, 1890.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Manitoba, enacts as follows:

Department established.

1. There shall be a Department of Education, which shall consist of the Executive Council, or a committee thereof appointed by the Lieutenant-Governor-in-Council. R.S.O., c. 224, s. 1.

Powers of Department of Eduation. Appointing Inspectors and other officers. Fixing salaries. Prescribing forms. Providing Model and Normal schools. Conducting examinations of teachers. Prescribing length of vacations, etc.

2. The Department of Education shall have power:

(*a*) To appoint inspectors of High and Public Schools, teachers in Provincial Model and Normal Schools, and Directors of Teachers' Institutes;

(*b*) To fix the salaries of all inspectors, examiners, Normal and Model school teachers and other officials of the Department;

(*c*) To prescribe forms for school registers and reports to the Department;

(*d*) To provide for Provincial Model and Normal schools. 44 Vic., c. 4, s. 5; R.S.O., c. 224, s. 4;

(*e*) To arrange for the proper examination and grading of teachers and the granting and cancelling of certificates. Certificates obtained outside the Province may be recognized instead of an examination.

(*f*) To prescribe the length of vacations and the number of teaching days in the year.

One member of Department to sign certificates.

3. The Department of Education shall nominate one of its members to sign all certificates granted by the Department.

Advisory Board. Constitution of Board. Quorum. Four members to be appointed.

4. There shall be a Board constituted as hereinafter provided, to be known as "The Advisory Board."

5. Said Board shall consist of seven members. Three members shall constitute a quorum for the transaction of business.

6. Four of the members of said Advisory Board shall be appointed by the Department of Education for a term of two years. Provided, that on the occasion of the first appintment the term of office of two of such members so appointed shall be one year.

Public school teachers to elect two members.

7—(1) Two of the members of the said Advisory Board shall be elected by the Public and High school teachers actually engaged in teaching in the Province.

(2) The Department of Education shall, from time to time, divide the Province into two districts, so that the said teachers in each district may elect one member of said Board. Province to be divided into two districts for purposes of such election.

8. On or before the first day of June in each year, the Department of Education shall furnish each High and Public School teacher actually engaged in teaching with a blank form of voting paper for the purpose of voting for a member of said Board. Voting papers to be furnished.

9. Such voting papers shall be sent to one of the appointed members of said Board. Voting papers to be sent to appointed member.

10. The appointed members of the said Board shall receive and count the voting papers, and decide any questions relating thereto, and shall report to the Department of Education the names of the persons elected. Appointed members to count votes.

11. Voting papers received after the thirtieth day of June shall not be counted. The person receiving the highest number of votes, in each case, shall be elected. Voting papers must be in by 30th June.

12. The term of office of such members so elected shall be two years, and shall commence on the first day of August next after election. Term of office.

13. The seventh member of said Board shall be appointed by the University Council, by ballot, from time to time, for a term of two years. University Council to appoint one member.

14. Said Advisory Board shall have power: Powers of Advisory Board.

(*a.*) To make regulations for the dimensions, equipment, style, plan, furnishing, decoration and ventilation of school houses, and for the arrangement and requisites of school premises; Equipment and ventilation of school-houses.

(*b.*) To examine and authorize text-books and books of reference, for the use of pupils and school libraries; Authorize text-books.

(*c.*) To determine the qualifications of teachers and inspectors for High and Public Schools; Qualification of teachers and inspectors.

(*d.*) To determine the standard to be obtained by pupils for admission to High Schools; Admission to High Schools.

(*e.*) To decide or make suggestions concerning such matters as may, from time to time, be referred to them by the Department of Education; Decide matters referred.

(*f.*) To appoint examiners for the purpose of preparing examination papers for teachers' certificates and for entrance admission of pupils to High Schools, who shall report to the Department of Education; Appointing examiners.

(*g.*) To prescribe the forms of religious exercises to be used in schools; Forms of religious exercises.

(*h.*) To make regulations for the classification, organization, discipline and government of Normal, Model, High and Public Schools. 44 Vic., c. 4, s. 5; R. S. O., c. 224, s. 4. Regulations for Normal, Model, High and Public Schools.

(*i.*) To determine to whom certificates shall issue; To determine to whom certificates shall issue, etc.

(*j.*) To decide upon all disputes and complaints laid before them, the settlement of which is not otherwise provided for by law. To settle disputes, settlement of which not otherwise provided for.

15. The Department of Education shall report annually to the Lieutenant Governor in Council upon the Model, Normal, High and Public Schools, with such statements and suggestions for promoting education generally as may be deemed useful and expedient. R. S. O., c. 224, s. 5. Annual report to be made by Department of Education.

16—(1.) Every regulation or Order-in-Council made under this Act, or under the Public and High Schools Acts, by the Executive Regulations and Orders-in-

Council to be laid before Legislative Assembly.

Council, the Department of Education and the Advisory Board, shall be laid before the Legislative Assembly forthwith if the Legislature is in session at the date of such regulation or Order-in-Council, and if the Legislature is not in session such regulation or Order-in-Council shall be laid before the said House within the first seven days of the session next after such regulation or Order-in-Council is made.

Regulation or order disapproved of by Legislative Assembly to be void.

(2.) In case the Legislative Assembly at the said session, or if the session does not continue for three weeks after the said regulation or Order-in-Council is laid before the House, then at the ensuing session of the Legislature, disapproves by resolution of such regulation or Order-in-Council, either wholly or of any part thereof, the regulation or Order-in-Council, so far as disapproved of, shall have no effect from the time of such resolution being passed. R. S. O., c. 224, s. 7.

Appointing officers, etc.

17. The Department of Education may appoint such officers, clerks and servants as may be necessary for the conduct of the business of the Department and of the Advisory Board.

Boards of Education, etc to cease to hold office after 1st May, 1890.

18. From and after the first day of May, A.D. 1890, the Board of Education and Superintendents of Education appointed under Chapter 4 of 44 Victoria and amendments, shall cease to hold office, and within three days after said first day of May, said Boards and Superintendents shall deliver over to the Provincial Secretary all records, books, papers, documents and property of every kind belonging to said Boards.

When Act shall come into force.

19. This Act shall come into force on the first day of May, A.D. 1890.

I, Armand Henry Corell, Deputy of Elias George Conklin, Esq., Clerk of the Legislative Assembly and Custodian of the Statutes of the Province of Manitoba, certify the subjoined to be a true copy of the original enactment passed by the Legislative Assembly of Manitoba in the third Session of the seventh Legislature, held in the fifty-third year of Her Majesty's reign, and assented to in the Queen's name by His Honour the Lieutenant-Governor on Monday, the thirty-first day of March, A.D. 1890.

Given under my hand and the seal of the Legislative Assembly of Manitoba, at Winnipeg, this third day of April, in the year of Our Lord one thousand eight hundred and ninety.

A. H. CORELL,
Deputy Clerk, Legislative Assembly, Manitoba.

APPENDIX B.

No. 13. BILL. 1890.

An Act Respecting Public Schools.

[*Assented to 31st March*, 1890.)

Short title. Sec. 1.
Interpretation. Sec. 2.
Existing arrangements continued. Secs. 3, 4.
Public schools to be free. Sec. 5.
School Age. Sec. 5.
Religious exercises, Secs. 6, 7, 8.
Rural public schools:—
New school districts. Sec. 9.
Trustees' term of office and qualification. Secs. 10, 11, 12.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Manitoba, enacts as follows:

PRELIMINARY.

Short title. 1. This Act may be cited as "The Public Schools Act." R. S. O., c. 225, s. 1.

Interpretation. 2. Where the words following occur in this Act, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears:

"Teacher." (1) "Teacher" shall include female as well as male teachers.

"School site." (2) "School site" shall mean such area of land as may be necessary for the school building, teacher's residence, offices and play-grounds connected therewith.

"Owner." (3) "Owner" shall include a mortgagee, lessee or tenant, or other person entitled to a limited interest, and whose claims may be dealt with by arbitration as herein provided.

"Resident." (4) "Resident" shall include such persons who, though not actually resident in a school district, pay a school rate at least equal to the average school rate paid by the actual residents of such district.

"Ratepayer." (5) "Ratepayer" shall mean an assessed householder, owner or tenant, or any person entered on the assessment roll as a farmer's son.

"Inspector." (6) "Inspector" shall mean the school inspector for the territory in which the school district is situate. R.S.O., c. 225, s. 2.

Rural School District. (7) "Rural School District" shall mean a school district situate wholly in a rural municipality or rural municipalities.

Existing school arrangements continued. 3. All Protestant and Catholic school districts, together with all elections and appointments to office, all agreements, contracts, assessments and rate bills, heretofore duly made in relation to Protestant or Catholic schools, and existing when this Act comes into force, shall be subject to the provisions of this Act. R. S. O., c. 225, s. 4.

Trustees' term of office. 4. The term for which each school trustee holds office at the time this Act takes effect shall continue as if such term had been created by virtue of an election under this Act. R. S. O., c. 225, s. 5.

PUBLIC SCHOOLS TO BE FREE.

Public Schools to be free. School age. 5. All Public Schools shall be free schools, and every person in rural municipalities between the age of five and sixteen years, and in cities, towns and villages between the age of six and sixteen, shall have the right to attend some school. R. S. O., c. 225, s. 6.

RELIGIOUS EXERCISES.

Religious exercises. 6. Religious exercises in the Public Schools shall be conducted according to the regulations of the Advisory Board. The time for such religious exercises shall be just before the closing hour in the afternoon.

Conscience clause. In case the parent or guardian of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then such pupil shall be dismissed before such religious exercises take place.

School trustees to have option as to religious exercises. 7. Religious exercises shall be held in a Public School entirely at the option of the school trustees for the district, and upon receiving written authority from the trustee, it shall be the duty of the teachers to hold such religious exercises.

Schools must be non-sectarian. 8. The Public Schools shall be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided.

NEW SCHOOL DISTRICTS.

New school districts. 9. The council of each rural municipality shall form portions of the municipality where no schools have been established into school districts.

Provided, no school district shall be so formed unless there shall be at least ten children of school age living within the same, and none distant more than three miles by the most direct road from the site for the school house. Provided, that no school district shall include more territory than twenty square miles, exclusive of public roads. There shall be an appeal from the action of the council in so forming school districts in the manner provided in section 69. R. S. O., c. 225, s. 9; 47 Vic., c. 37, s. 3; 48 Vic., c. 27, s. 4.

SCHOOL TRUSTEES FOR RURAL DISTRICTS.

Trustees' term of office.

10. For each rural school district there shall be three trustees, each of whom, after the first election of trustees, shall hold office for three years, and until his successor has been elected. R. S. O., c. 225, s. 12.

Term of office of each Trustee.

11. The trustees elected at a first school meeting in a rural school district shall respectively continue in office as follows:

First.

(1) The first person elected shall continue in office for two years, to be reckoned from the annual school meeting next after his election, and thence until his successor has been elected;

Second.

(2) The second person elected shall continue in office for one year, to be reckoned from the same period, and until his successor has been elected;

Third.

(3) The third or last person elected shall continue in office until the next ensuing annual school meeting in such district, and until his successor has been elected;

Ranking of trustees.

(4) In case of a poll being taken for one or more trustees at a first school meeting, then the trustees shall rank in seniority according to the number of votes polled, and, in case of a tie, then in the order of their nomination. R. S. O., c. 225, s. 30; 44 Vic., c. 4, s. 18.

Trustees, qualification of.

12. The persons qualified to be elected trustees shall be such persons as are actual resident ratepayers within the school district, rated on the last revised assessment roll of the municipality, or one of the municipalities in which the school district is situate, and of the full age of twenty-one years, able to read and write, and not disqualified under this Act. R. S. O., c. 225, s. 13.

ELECTORS FOR RURAL SCHOOL DISTRICTS.

Electors in rural school districts.

13. In rural school districts every ratepayer of the full age of twenty-one years, rated on the last revised assessment roll of the municipality, or one of the municipalities in which the school district is situate, shall be entitled to vote at any election for school trustee or on any question whatsoever, at any annual or special meeting in the district except as is herein otherwise provided. R. S. O., c. 225, s. 14; 47 Vic., c. 37, s. 7; 48 Vic., c. 27, s. 6.

ANNUAL SCHOOL MEETINGS IN RURAL DISTRICTS.

Annual school meeting.

14. On the first Monday in December in each year (provided the day is not a statutory holiday, in which case then on the following Wednesday) a meeting of the ratepayers of each rural school district shall be held, commencing at ten o'clock in the forenoon, for the purpose (among other things) of electing a school trustee or trustees. Notice of such meeting shall be given by the trustees (except as is herein otherwise provided) by notice posted on the school house, if there be one, and in one other public place in the district at least two weeks before such day. R. S. O., c. 225, s. 15; 44 Vic., c. 4, s. 16; 47 Vic., c. 37, s. 5.

Meetings to be called in default of first or annual meetings.

15. In case, from the want of proper notice or other cause, any first or annual school meeting, required to be held for the election of trustees, was not held at the proper time, the inspector, or any two ratepayers in the district, may call a school meeting, by giving six days' notice, to be posted in at least three of the most public places in the school district; and the meeting thus called shall possess all the powers and perform all the duties of the meeting in the place of which it is called. R. S. O., c. 225, s. 16; 44 Vic., c. 4, s. 21; 47 Vic., c. 37, s. 6.

Order of business.

16—(1) The electors of such school district present at such meetings shall elect one of their own number to preside over its proceedings, and shall also appoint a secretary, who shall record the proceedings of the meeting, and perform such other duties as may be required of him by this Act.

(2) The business of such meeting may be conducted in the following order:—

(a) Receiving the annual report of the trustees, and disposing of the same;

(b) Receiving the annual report of the auditor or auditors, and disposing of the same;

(c) Electing an auditor for the current year;

(d) Miscellaneous business;

(e) Electing a trustee or trustees to fill any vacancy or vacancies. R. S. O., c. 225, s. 17; 44 Vic., c. 4, s. 17; 47 Vic., c. 37, s. 5.

Proceedings at election of School Trustee.

17. The election of trustees shall proceed by way of nomination, each nomination requiring a mover and seconder, both of whom must be present and qualified electors. Nominations shall be kept open until eleven o'clock in the forenoon. In case, at the said hour of eleven o'clock, the number of nominations does not exceed the number of vacancies to be filled, then the chairman shall declare the person or persons so nominated to be elected. In case the number of nominations exceed the number of vacancies to be filled, a show of hands shall be taken, and the person or persons having the majority of votes shall be declared elected by the chairman, should no ratepayer demand a poll. If a poll is demanded by a ratepayer present, the chairman shall be the returning officer, and shall open the poll forthwith. The secretary shall record the votes given. The poll shall be closed at four o'clock in the afternoon. Provided, that if at any time one hour elapse during such poll without a vote having been recorded, the poll shall then be closed. After the poll is closed the chairman shall declare the person or persons receiving the highest number of votes elected. R. S. O., c. 225, ss. 19, 20–22.

Chairman, duties of.

18. The chairman shall preside and submit all motions to the meeting in the manner desired by the majority. In case of an equality of votes, he shall give the casting vote, but no other vote. He shall decide all questions of order, subject to an appeal to the meeting. R. S. O., c. 225, s. 18.

When voter is objected to.

19. In case an objection is made to the right of any person to vote at any annual or special meeting, either for trustee or upon any school question, the chairman of the meeting, or other officer presiding, shall require the person whose right of voting is objected to, to make the following declaration:

Declaration.

(1) I, A. B., do declare that I am an assessed ratepayer (or farmer's son, as the case may be) in school district

(2) That I am of the full age of 21 years.

(3) That I have the right to vote at this election.

Whereupon the person making such declaration shall be entitled to vote, except as is herein otherwise provided. R. S. O., c. 225, s. 2.

20. Any public school question raised at such annual meeting, or any special meeting, may be submitted to vote and a poll demanded. In case of a poll being demanded, the proceedings shall be similar to those above provided for election of trustee. Public School questions to be decided at meetings.

21. The secretary of every school meeting at which any person or persons were elected as school trustees, shall forthwith notify in writing each of such persons of his election, and every person so notified shall be considered as having accepted such office, unless a notice to the contrary effect has been delivered by him to such secretary within twenty days after the date of such election. R. S. O., c. 225, s. 23. Acceptance of office by Trustees.

22. Any trustee elected to fill a vacancy shall hold office only for the unexpired term of the person in whose place he has been elected. R. S. O., c. 225, s. 24. Term for vacancies.

23—(1) No school corporation shall cease to exist by reason of the want of trustees, but in case of such want any two ratepayers of the district, or the inspector, may, by giving six days' notice, to be posted in at least three of the most public places of the district, call a meeting of the ratepayers, who shall proceed to elect three trustees in the manner prescribed in Section 17 and the following sections of this Act; and the trustees thus elected shall hold and retire from office in the manner prescribed by Section 11 of this Act. Corporation not to cease by want of Trustees. Tenure of office.

(2) When the ratepayers of any school district for two years neglect or refuse to elect trustees, after being duly notified as herein provided, the council of the municipality may appoint trustees for the said school district, who shall hold office for the same term as if elected by the ratepayers. R. S. O., c. 225, s. 27. When Municipal Council may appoint Trustees.

24. In case of the formation of a new school district, the clerk of the municipality shall see that the notices for the annual meeting are posted up. R. S. O., c. 225, ss. 28 and 29. New district. Posting notices.

25. Every trustee, before acting as such, shall make, before the chairman of the Board, or before a justice of the peace, the following declaration in writing, which he shall deposit with the secretary-treasurer: Declaration of office.

I, A. B., do solemnly declare that I will truly, faithfully, and to the best of my ability and judgment, discharge the duties of the office of school trustee for the school district of No. to which I have been elected.

Dated at this day of A. D. 18

Declared before me at this day of A.D. 18

C. D., Chairman of Board, or J. P.

A. B.

—46 and 47 Vic., c. 46, s. 10.

26. A correct copy of the minutes of a first, and of every annual and of every special school meeting, signed by the chairman and secretary, shall be forthwith transmitted by the chairman of the meeting to the inspector. R. S. O., c. 225, s. 31. Copy of minutes to be sent to Inspector.

27—(1) When complaint is made to the inspector by any ratepayer that the election of a trustee for a rural school district, or that the proceedings or any part thereof of any rural school meeting, have not been in conformity with the provisions of this Act, the inspector shall investigate the same, and confirm or set the election or proceeding aside, and appoint the time and place for a new election, or for the reconsideration of a school question, but no complaint in regard to any election or pro- Complaints as to elections.

ceeding at a school meeting shall be entertained by any inspector, unless made to him in writing within twenty days after the holding of the election or meeting.

Proceedings of Trustees not invalidated by illegally elected Trustee having acted.

(2) No resolution, by-law, proceeding or action of any board of trustees, shall be invalid or set aside by reason of any person whose election has been annulled or declared illegal having acted as a trustee. R.S.O., c. 225, s. 32; 44 Vic., c. 4, s. 21; 47 Vic., c. 37, ss. 6 and 20.

SECRETARY-TREASURER IN RURAL SCHOOL DISTRICTS.

Secretary-Treasurer to be appointed.

28. The board of school trustees shall appoint, as secretary-treasurer, one of their own number, or some other competent person, who shall give such security as may be required of him by the Board; such security shall be deposited with the clerk of the municipality. R.S.O., c. 225, s. 33; 44 Vic., c. 4, ss. 55 and 56.

Secretary-Treasurer—duties of.

29. It shall be the duty of a secretary-treasurer of a rural school board:—

(1) To keep a full and correct record of the proceedings of every meeting of the board in the minute-book provided by the trustees for that purpose, and to see that the minutes, when confirmed, are signed by the chairman or presiding trustee;

(2) To receive all school moneys collected from the inhabitants or ratepayers of the district or other persons, and to account for the same;

(3) To disburse all moneys in the manner directed by a majority of the trustees;

(4) To produce, when called for by the trustees, auditors or other competent authority, all papers and moneys belonging to the corporation;

(5) To call, at the request in writing of two trustees, a special meeting of the board of trustees. R.S.O., c. 225, s. 34.

Notices of meetings—how given.

30. Notice of all meetings shall be given by the secretary to each of the trustees, or by any one of the trustees to the others, by notifying them personally, or in writing or by sending a written notice to their residences. R.S.O., c. 225, s. 35.

Corporate acts must be adopted at lawful Trustee meetings.

31. No act or proceeding of a rural school corporation, which is not adopted at a regular or special meeting of the trustees, shall be valid or binding on any person affected thereby, unless notice has been given, as required by this Act, and unless at least two trustees are present. R.S.O., c. 225, s. 36.

Statement to be prepared by Secretary-Treasurer.

32. Every secretary-treasurer of a rural school district shall prepare and submit to the board of school trustees annually, previous to the annual election of trustees, a detailed statement of the receipts and expenditures of the school district for the current school year then expiring, and such statement, after being approved by the school trustees, shall be by them submitted at the annual meeting. The secretary-treasurer shall, on the payment to him of the sum of one dollar, furnish to any ratepayer a copy of such statement. 44 Vic., c. 4, s. 58.

Remuneration of Secretary-Treasurer.

33. The remuneration of a secretary-treasurer of a rural school district may, in the discretion of the school trustees, be fixed at any amount not exceeding the sum of ten dollars per annum. Such remuneration shall cover all services rendered and all contingent expenses whatever except such as may be specially authorized by the board. 44 Vic., c. 4, s. 59.

AUDITORS.

Appointment of Auditor.

34.—(1) Every board of rural school trustees shall, on or before the fifteenth day of November, appoint an auditor, and in case of their neglect, or the neglect of the ratepayers at an annual or special meeting to do so, or in case of an auditor being appointed or elected who refuses

or is unable to act, then the inspector shall (at the request in writing of any two ratepayers) make the appointment.

(2) It shall be the duty of the trustees, or their secretary-treasurer, to lay all their accounts before the school auditors of the district, or either of them, together with the agreements, vouchers, contracts and books in their possession, and the trustees, or their secretary-treasurer, shall afford to the auditors, or either of them, all the information in their or his power as to the receipts and expenditures of school moneys. R.S.O., c. 225, s. 37; 44 Vic., c. 4, s. 74. Audit.

35. The auditors appointed, or one of them, shall, on or immediately after the first day of November in each year, appoint a time, before the day of the next ensuing annual school meeting, for examining the accounts of the school district. R.S.O., c. 225, s. 38. Time of audit.

36. It shall be the duty of the auditors of every rural school district: Duties of Auditor.

(1) To examine into and decide upon the accuracy of the accounts of the district, and whether the trustees have duly accounted for and expended for school purposes the moneys received by them and to submit the said accounts, with a full report thereon, at the next annual school meeting;

(2) In case of difference of opinion between the auditors on any matter in the account, it shall be referred to and decided by the Inspector;

(3) If both of the auditors object to the lawfulness of any expenditures made by the trustees, they shall submit the matters in difference to the annual meeting, which may either determine the same or submit the matter to the Inspector, whose decision shall be final;

(4) It shall be competent for the auditors, or one of them:

(*a*) To require the attendance of all or any of the persons interested in the accounts, and of their witnesses, with all such books, papers, and writings as the auditor or auditors may direct them or either of them to produce;

(*b*) To administer oaths to such persons and witnesses;

(*c*) To issue their or his warrant to any person named therein; to enforce the collection of any moneys by them awarded to be paid; and the person named in the warrant shall have the same power and authority to enforce the collection of the moneys mentioned in the said warrant, with all reasonable costs, by seizure and sale of the property of the party or corporation against whom the same has been issued, as any bailiff of a County Court has in enforcing a judgment and execution issued out of such court;

(*d*) The auditors shall remain in office until their audit is completed. R. S. O., c. 225, s. 39.

DUTIES OF TRUSTEES OF RURAL DISTRICTS.

37. It shall be the duty of the trustees of rural school districts:

(1) To appoint the place of each annual school meeting of the ratepayers of the district, and the time and place of a special meeting of the same for (1) the filling up of any vacancy or vacancies in the trustee corporation occasioned by death, removal, or other cause; or (2) for the selection of a new school site; or (3) the appointment of a school auditor; or (4) any other lawful school purpose, as they may think proper; and to cause notices of the time and place, and of the objects of such meetings, to be posted in three or more public places of the district at least six days before the time of holding such meeting; Meetings to be appointed by the Trustees. Filling vacancies. Notice.

(*a*) Every such meeting shall be organized, and its proceedings recorded in the manner provided for in Section 16, and the following sections of this Act.

Adequate accommodation.

(2) To provide adequate accommodation and a legally qualified teacher or teachers, according to the regulations prescribed by the Department of Education, for two-thirds of the actual resident children, between the ages of five and sixteen years, as ascertained by the census taken by the municipal council for the next preceding year;

Apply to municipalities for school moneys.

(3) To apply to the municipal council at or before its first meeting after the thirty-first day of July for the levying and collecting by rate of all sums for the support of their school or schools, and for any other school purposes authorized by this Act to be collected from the ratepayers of such district, or to raise the amount necessary for the purchase of school sites, the erection or otherwise acquiring of school houses and their appendages, either by one yearly rate or by debentures, as provided in Section 101 of this Act, as may be required by the trustees;

Arrange payment of salaries.

(4) To arrange for the payment of teachers' salaries at least quarterly, and, if necessary, to borrow on their promissory note, under the seal of the corporation, at interest not exceeding ten per cent. per annum, such moneys as may be required for that purpose, until the taxes imposed therefor are collected;

Repairing, etc., school-house.

(5) To keep the school house, furniture, out-buildings and enclosures in proper repair, and where there is no suitable school house belonging to the district, or where two or more school houses are required, to build or rent a house or houses, and to keep such house or houses, its or their furniture, out-buildings and enclosures in proper repair;

Names and addresses of trustees and teachers to be given to municipal clerk.

(6) To give notice in writing, before the first day of January in each year, to the Inspector and to the clerk of the municipality in which their school is situate, of the names and post office addresses of the several trustees then in office, of the secretary-treasurer and of the teachers employed by them, and to give reasonable notice in writing, from time to time, of any changes therein;

Exempt indigent persons.

(7) To exempt, in their discretion, from the payment of school rates, wholly or in part, any indigent persons, notice of such exemption to be given by the trustees to the clerk of the municipality, on or before the first day of August;

Dismissal of refractory pupils.

(8) To dismiss from the school, any pupil who shall be adjudged so refractory by the trustees (or by a majority of them), and the teacher, that his presence in school is deemed injurious to the other pupils;

Custody of school property.

(9) To take possession, and have the custody and safe keeping of all Public School property which has been acquired or given for Public School purposes in the district; and to acquire and hold as a corporation, by any title whatsoever, any land, moveable property, moneys or income given or acquired at any time for Public School purposes, and to hold or apply the same according to the terms on which the same were acquired or received; and to dispose, by sale or otherwise, of any school site or school property not required by them in consequence of a change of school site or other cause; to convey the same under their corporate seal, and to apply the proceeds thereof to their lawful school purposes, or as directed by this Act;

Sale of school site or other property.

Visit schools.

(10) To visit, from time to time, every school under their charge, and see that it is conducted according to law and the authorized regulations, and to provide school registers and a visitors' book, in the form prescribed by the Department of Education;

Text-books.

(11) To see that no unauthorized books are used in the school, and that the pupils are duly supplied with a uniform series of authorized text-books, sanctioned by the Advisory Board; and to do whatever they may deem expedient in regard to procuring apparatus, maps, prize and library books for their schools;

Apparatus.

(12) To cause to be prepared and read at the annual meeting of the ratepayers, a report for the year then ending, containing, among other things, a summary of their proceedings during the year, together with a full and detailed account of the receipt and expenditure of all school moneys received and expended in behalf of the district for any purpose whatever, during such year, and signed by the trustees, and by either or both of the school auditors of the district; Report to annual meeting.

(13) To transmit to the Department of Education the semi-annual and annual returns at the times and according to the forms prescribed by the Department of Education; Annual and semi-annual returns.

(14) To collect, at their discretion, from the parents or guardians of children who do not reside, or are not assessed within the school district, a sum not exceeding fifty cents per month, for each pupil attending school. R. S. O., c. 225, s. 40; 44 Vic., c. 4, s. 39; 46 and 47 Vic., c. 46, s. 11; 47 Vic., c. 37, s.s. 12 and 13. Collection from non-residents.

DISTRICTS IN UNORGANIZED TERRITORY.

38—(1) In unorganized territory it shall be lawful for the inspector of the district to form a portion or the whole of such territory into a school district. Formation of schooldistricts

(2) No such district shall, in length or breadth, exceed five miles in a straight line, and, subject to this restriction, the boundaries may be altered by the same authority from time to time, and the alteration shall go into operation on the twenty-fifth day of November next after such alteration; Provided always, no such school district shall be formed except on the petition of five heads of families resident therein. R.S.O., c. 225, s. 41. Limits of schooldistricts

39. After the formation of such a school district, it shall be lawful for any two of the petitioners, by notice posted for at least six days in not less than three of the most public places in the district, to appoint a time and place for a meeting for the election, as provided by law, of three school trustees for the district. R. S. O., c. 225, s. 43. Election of School Trustees.

40. The trustees elected at such meetings, or at any subsequent school meetings of the district, as provided by law, shall have all the powers and be subject to all the obligations of public school trustees generally. R. S. O., c. 225, s. 44. Powers and obligations of trustees.

41. The Inspector shall assume the functions of court of revision for any such district, and all the proceedings of the Inspector in the matter of the revision or correction of the assessment roll, shall be subject to the provisions of this Act, and shall have the same effect as if made in a court of revision. R. S. O., c. 225, s. 44. Inspector to constitute court of revision.

42. The trustees of all school districts in unorganized territory shall, annually, appoint a duly qualified person to make out an assessment roll for the district. R. S. O., c. 225, s. 45. Annual assessment roll.

43. A copy of the said roll shall be open to inspection by all persons interested, at some convenient place in the district, notice whereof, signed by the secretary-treasurer of the district, shall be annually posted in at least three of the most public places in the district, and shall state the place and the time at which the Inspector will hear appeals against said assessment roll, and such notice shall be posted as aforesaid by the trustees for at least three weeks prior to the time appointed for hearing the appeals. R. S. O., c. 225, s. 46. Appeal against assessment.

44. All appeals shall be made in the same manner and after the same notice, as nearly as may be, as appeals are made to a court of revision in the case of ordinary municipal assessments, and the Inspector shall have the same power as ordinary municipal courts of revision. Provided, Manner o appeal.

that the court of revision need not be held in the district, R.S.O., c. 225' s. 47.

Exemptions.

45. The same exemptions shall be allowed in assessing property, as are allowed in connection with the collection of school taxes in districts in organized territory.

Confirmed roll binding.

46. The annual roll, as finally passed and signed by the inspector, shall be binding upon the trustees and ratepayers of the district, until the annual roll for the succeeding year is passed and signed as aforesaid. R.S.O., c. 225, s. 48.

Union school districts.

47. In forming union school districts between, and out of, an organized municipality and an unorganized locality, it shall be lawful for such union school district to be formed or altered according to the provisions of this Act, except that the Inspector shall act for the unorganized locality, and the reeve of the organized municipality for his municipality. R.S.O., c. 225, s. 50.

Appointment and duty of school collector.

48. The trustees shall appoint some fit and proper person, or one of themselves, to be a collector (who may also be secretary-treasurer), to collect the rates imposed by them upon the ratepayers of their school district, or the sums which the inhabitants or others may have subscribed; or a rate-bill imposed on any person; and pay to such collector, at the rate of not less than five, or more than ten per centum on the moneys collected by him; and every such collector shall give such security as shall be satisfactory to the trustees, which security shall be lodged for safe keeping with the Inspector by the trustees. R.S.O., c. 225, s. 51.

Powers of school collector.

49. Every such collector shall have the same powers in collecting the school rate, rate-bill or subscriptions, shall be under the same liabilities and obligations, and proceed in the same manner in his school district, as a municipal collector does in his municipality, in collecting rates, as provided in the Municipal and Assessment Acts, from time to time, in force. R.S.O., c. 225, s. 52.

Sale of lands for taxes.

50. A statement of arrears of taxes on lands may be returned by the collector to the secretary-treasurer of a rural municipality, near to such school district to be designated by the Inspector. Upon receipt of such statement of arrears of taxes by the secretary-treasurer, such municipality shall proceed to collect the same by sale of such land for taxes or otherwise, in the same manner, and with the same effect as if such lands were situate in and such taxes had been levied by such municipality. All moneys collected on account of such arrears, shall be paid over by such rural municipality to such board of school trustees, less a charge of five per cent. for collecting the same.

Secs. 38 to 50 to apply to districts heretofore formed in unorganized territory.

51. The above provisions as to unorganized territory shall apply to school districts formed but not within the limits of any organized municipality.

RURAL SCHOOL SITES.

New sites.

52. Before any steps are taken by the trustees for securing a new school site on which to erect a new school house, they shall call a special meeting of the ratepayers of the district to consider the site proposed; and no change of school site shall be made except in the manner hereinafter provided, without the consent of the majority of such special meeting. R.S.O., c. 225, s. 64.

When trustees and ratepayers disagree.

53. In case a majority of the trustees and a majority of the ratepayers present at such special meeting differ as to the situation of a new site, each party shall then and there choose an arbitrator, and the Inspector, or, in case of his inability to attend, any person appointed by him to act on his behalf, shall be a third arbitrator; and such three

arbitrators, or a majority of them present at any lawful meeting, shall have authority to make and publish an award upon the matter or matters submitted to them. R.S.O., c. 225, s. 65. Award.

54. With the consent, or at the request of the parties to the reference, the arbitrators, or a majority of them, shall have authority, within three months from the date of their award, to reconsider such award and make and publish a second award, which award, (or the previous one, if not reconsidered by the arbitrators) shall be binding upon all parties concerned for at least one year from the date thereof. R.S.O., c. 225, s. 66. Reconsideration of award.

55. If the owner of the land selected for a new school site, or required for the enlargement of school premises, refuses to sell the same, or demands therefor a price deemed unreasonable by the trustees of any district, then such owner and the trustees shall each forthwith appoint an arbitrator, and the arbitrators thus appointed, together with the inspector, or in case of his inability to attend, any person appointed by him on his behalf as third arbitrator, or any two of them, shall appraise the damages for such land. R.S.O., c. 225, s. 67. When owner refuses to sell.

56. If the majority of the school trustees, or the majority of a public school meeting, neglect or refuse, where there is a difference in regard to the selection of a school site, to appoint an arbitrator, as provided in the preceding section, or if the owner of the land selected as a school site, as provided by the said section, neglects or refuses to appoint an arbitrator, it shall be competent for the Inspector, with the arbitrator appointed, to meet and determine the matter; and the Inspector, in case of such refusal or neglect, shall have a second or casting vote, if he and the arbitrator appointed do not agree. R.S.O., c. 225, s. 68. Appointment of arbitrators —their powers

57—(1) The arbitrators aforesaid, or any two of them, shall have the power to settle all claims or rights of incumbrancers, lessees, tenants or other persons, as well as those of the owner, in respect of the land required for the purpose of the school site, upon notice in writing to every such claimant, and after hearing and determining his claims or rights. Additional powers of arbitrators.

(2) Upon the tender or payment of the amount of such damage to the owner or other person entitled thereto, or to any part of such amount, by the school trustees, the land shall be taken and used for the purpose aforesaid. R.S.O., c. 225, s. 69. Taking land.

58. If only a majority of the arbitrators appointed to decide any case arising under the authority of this Act are present at any lawful meeting, in consequence of the neglect or the refusal of the other arbitrator to meet them, it shall be competent for those present to make and publish an award upon the matter or matters submitted to them, or to adjourn the meeting for any period not exceeding ten days, and give the absent arbitrator notice of the adjournment. R.S.O., c. 225, s. 70. Proceedings where an arbitrator is absent.

59. Any award for a school site, made and published under this Act, if there be no conveyance, shall thereafter be deemed to be the title of the trustees to the land mentioned in it, and shall be a good title thereto against all persons interested in the property in any manner whatever, and shall be registered in the proper Registry Office or Land Titles Office, on the affidavit of one of the trustees verifying the same. R.S.O., c. 225, s. 71. Award to constitute title.

60. The parties concerned in all such disputes, shall pay all the expenses incurred in them, according to the award or decision of the arbitrators, and the inspector respectively. R.S.O., c. 225, s. 72. Cost of arbitration.

61. A school site shall not be selected within a hundred yards of the garden, orchard, pleasure ground, or dwelling house of the owner of the site, without his consent. R. S. O., c. 225, s. 73. Selection of school site.

Who may convey school sites.

62. All corporations and persons whatever, tenants in tail or for life, guardians, executors, administrators, and all other trustees whatsoever, not only for and on behalf of themselves, their heirs and successors, but also for and on behalf of those they represent, whether infants, issue unborn, lunatics, idiots, femmes-couvertes, or other person, seized, possessed of or interested in any land, may contract for, sell or convey all or part thereof to school trustees for a school site, or an addition to the school site, or for a teacher's residence; and any contract, agreement, sale, conveyance and assurance so made, shall be valid and effectual to all intents and purposes whatsoever; and the corporations or persons so conveying, are hereby indemnified for what they respectively do by virtue of, or in pursuance of this Act. R.S.O., c. 225, s. 75.

Remedy in case of absence of owner.

63. If the owner of land, duly selected for the said purpose, is absent from the municipality in which the land lies, or is unknown, the trustees may procure from a sworn surveyor, a certificate that he is not interested in the matter; that he knows the land, and that some certain sum therein named is, in his opinion, a fair compensation for the same; and, on filing the said certificate with the Judge of the County Court of the district in which the land lies, accompanied by an affidavit or affidavits which satisfy the Judge that the owner is absent from the municipality, and that, after diligent enquiry, he cannot be found, the Judge may order a notice to be inserted, for such time as he sees fit, in some newspaper published in the district; and he may, in addition thereto, order a notice to be sent to any person by mail, or may direct service of the same, to be effected in such other way as he sees fit. R.S.O., c. 225, s. 76.

What notice shall contain.

64. The notice shall contain a short description of the land, and a declaration of the readiness of the trustees to pay the sum certified as aforesaid; shall give the name of a person to be appointed as the arbitrator of the trustees, if their offer of that sum is not accepted; shall name the time within which the offer is to be accepted, or an arbitrator named by the owner; and shall contain any other particulars which the County Judge may direct. R. S. O., c. 225, s. 77.

Arbitrators.

Judge may appoint arbitrator.

65. If within such time as the Judge directs, the owner does not notify the trustees of the acceptance of the sum offered by them, or notify to them the name of a person whom he appoints as arbitrator, the Judge shall, on the application of the trustees, appoint a sworn surveyor to be sole arbitrator for determining the compensation to be paid for the property. R. S. O., c. 225, s. 78.

Responsibility of trustees as to compensation.

66. Where land is taken by the trustees without the consent of the owner, the compensation to be paid therefor shall stand in the stead of the land; and after the trustees have taken possession of the land, any claim to, or incumbrance upon the same or any portion thereof, shall, as against the trustees, be converted into a claim to the compensation or to a proportion thereof, and the trustees shall be responsible accordingly whenever they have paid such compensation or any part thereof to a party not entitled to receive the same, saving always their recourse against such party. R. S. O., c. 225, s. 79.

In case of incumbrance.

67. If the trustees have reason to fear any claims or incumbrance, or if any party to whom the compensation or any part thereof is payable refuses to execute the proper conveyance, or if the party entitled to claim the same cannot be found or is unknown to the trustees, or if for any other reason the trustees deem it advisable, they may pay the arbitration and other expenses, and deposit the amount of the compensation with the treasurer of the municipality, or in such other manner as the Inspector may direct, with interest thereon for six months, and may deliver therewith an authentic copy of the conveyance, or of the agreement or award if there be no conveyance; and such agreement or award

Deposit of compensation money.

shall thereafter be deemed to be the title of the trustees to the land therein mentioned, and shall be a good title thereto against all persons interested in the property in any manner whatever, and shall be registered in the proper Registry Office or Land Titles Office on an affidavit of one of the trustees verifying the same. R.S.O., c. 225, s. 80; 51 Vic., c. 31, s. 1. Award to be registered.

ALTERATION OF SCHOOL DISTRICTS.

68. Every council of a rural municipality shall have power,

(1) To pass by-laws to unite two or more districts in the same municipality into one, in case (at a public meeting in each district called by the trustees or Inspector for that purpose) a majority of the ratepayers present at each such meeting request to be united; Union of existing districts.

(2) To alter the boundaries of a school district, or divide an existing district into two or more districts or to unite portions of an existing district with another district, or with any new district, in case it clearly appears that all persons to be affected by the proposed alteration, division or union respectively, have been duly notified, in such manner as the council may deem expedient, of the proposed proceeding for this purpose, or of any application made to the council to do so; Alteration etc. of school districts.

(3) Any such by-law shall not be passed later than the first day of May in any year, and shall not take effect before the twenty-fifth day of November next thereafter, and it shall be the duty of the clerk to send forthwith, after such by-law has been passed, a copy of the by-law and minutes relating to the formation or alteration or union to the trustees of every school district affected thereby, and to the Inspector. R. S. O., c, 225, s. 81; 44 Vic., c. 4, s. 14; 47 Vic., c. 37, s. 3. By-laws uniting districts.

69.—(1) A majority of the trustees, or any five ratepayers of one or more of the school districts concerned, may appeal to the County Court Judge of the district in which such district or districts is or are situated, against any by-law or resolution passed at any time previously by the municipal council, for the formation, division, union or alteration of their school district or districts, or against the neglect or refusal of the municipal council (on application being made to it by the trustees, or any five ratepayers concerned) to form, divide, unite, or alter the boundaries of a school district or school districts within the municipality. 48 Vic., c. 49, s. 82 (1); 50 Vic., c. 39, s. 14 (1). Appeal to County Judge

(2) Such County Court Judge shall have power to revise, determine, or alter the boundaries of the school district or school districts so far as to settle the matters complained of; but the alterations or determination of the said matters shall not take effect before the twenty-fifth day of November in the year in which the Judge so decides, and shall thence continue in full force for the period of three years at least, and until lawfully changed by the municipal council, but such change shall be subject to the like appeal to the County Court Judge; Provided, that where the decision of the Judge does not affirm that of the council, and an application for reconsideration signed by a majority of the ratepayers affected by the decision, or signed by a majority of the trustees of the district or districts affected by the decision, is delivered to the Judge of the County Court within three months of the giving of the decision, the said Judge may reconsider the matter, and if he thinks fit, may vary such decision, and shall, in such case, direct at what time the decision as varied shall go into effect, and the three years hereinbefore limited shall, in such case, be computed from the time when the decision varying the former decision is given. Appointment of arbitrators. Proviso.

(3) Due notice of the alterations or the determination of the said matters made by the Judge, shall be given by the Judge to the clerk of the municipality, and to the trustees of the school districts concerned. Notice.

Payment of judge.

(4) Such Judge shall be entitled to be paid the sum of five dollars per day, and actual travelling expenses in connection with said appeals, by the municipality in which the district or districts involved are situate. In case such district or districts is or are situate in more municipalities than one, then such payment shall be made by such municipalities in the proportion ordered by such Judge. R. S. O., c. 225, s. 82.

Adjustment of claims between unions in same municipality.

70. On the formation, dissolution, division or alteration of any school district in the same municipality, in case the trustees of the districts interested are unable to agree, the Inspector and two other persons appointed by the council as arbitrators shall value and adjust in an equitable manner all rights and claims consequent upon such formation, division, dissolution or alteration between the respective portions of the municipality affected, and determine in what manner and by what portion or by whom the same shall be settled; and the determination of the said arbitrators, or any two of them, shall be final and conclusive. R. S. O., c. 225, s. 83.

Disposal of school property when not wanted.

71. In case a school site or school house or other school property is no longer required in the district, in consequence of the alteration or the union of school districts, the same shall be disposed of, by sale or otherwise, in such a manner as a majority of the ratepayers in the altered or united school districts may decide at a public meeting called for that purpose; and the inhabitants transferred from one school district to another shall be entitled, for the public school purposes of the district to which they are attached, to such a proportion of the proceeds of the sale of such school house or other public school property as the assessed value of their property bears to that of the other inhabitants of the school district from which they have been so separated; and the residue of such proceeds shall be applied to the erection of a new school house in the old school district, or to other public school purposes of such old district. In the case of united districts, the proceeds of the sale shall be applied to the like public school purposes of such united districts. R. S. O., c. 225, s. 84.

FORMATION AND DISSOLUTION OF UNION SCHOOL DISTRICTS COMPOSED OF PARTS OF TWO OR MORE MUNICIPALITIES.

What unions may be formed

72. A union school district may be formed between (a) parts of two or more adjoining rural municipalities; (b), parts of one or more rural municipalities and an adjoining town or village. R. S. O., c 225, s. 85.

Procedure for formation, alteration or dissolution of union.

73. The following shall be the procedure for the formation, alteration, or dissolution of union school districts:

(1) On the joint petition of five ratepayers of the territory in question from each of the municipalities concerned, to their respective municipal councils, asking for the formation, alteration or dissolution of a union school district, each municipal council so petitioned may appoint an arbitrator (who must not be a member of the council), notice of which shall be sent by the respective clerks to the Inspector or Inspectors, who shall be *ex-officio* arbitrators.

(2) In cases where the persons so appointed arbitrators would be an even number, the Senior County Court Judge shall be added, or in the case of an arbitration affecting two or more judicial districts, then the Senior County Court Judge of the judicial district having the largest population according to the last Dominion census.

(3) The first meeting of the arbitrators appointed under this section shall be called by the Inspector representing the greatest number of schools, and such Inspector shall give reasonable notice in writing of such meeting to the clerks of the municipalities concerned

(4) The arbitrators, or a majority of them, shall report to the municipalities concerned upon the expediency of such union, alteration or dissolution, the specific parcels of land to be included in such union, and the proportion in which the part in each municipality shall be liable to contribute towards the erection and maintenance of the school and other requisite expenses; and shall at the same time value and adjust in an equitable manner all rights and claims consequent upon the formation, alteration or dissolution of such union between the respective municipalities and school districts concerned, and shall also determine in what manner and by what municipality or municipalities or what portions thereof the same shall be settled, and the sum or sums of money to be paid by one portion of the municipalities or school districts concerned to the union school so formed, altered or dissolved, and the disposition of the property of the union and any payment by one portion to the other, and such valuation, adjustment and determination shall form and be considered as an integral portion of their report, and such report shall be taken as the award of the said arbitrators, and shall be binding on the municipalities and school districts concerned subject to the provisions of this Act.

(5) The Inspector entitled under Sub-section 3 to call the meeting of the arbitrators, shall call the first meeting for the election of trustees.

(6) Such union, alteration, or dissolution, shall not take effect until the 25th day of the month of November, which will be at least three months after the award of the arbitrators is filed with the clerks of the municipalities concerned.

(7) Nothing herein contained shall be construed as restraining any municipal council from enlarging the boundaries of any union school district as may be deemed expedient. R. S. O., c. 225, s. 86; 52 Vic., (Ont.) c. 52.

Union of parts of municipalities to be one school district

74—(1) The union of part of one or more rural municipalities with a town or village shall be deemed one school district, and as belonging to such town or village, and the provisions of this Act respecting public schools in towns or villages shall apply thereto; and such part of the rural municipality for all school purposes shall be deemed to be united to such town or village.

(2) In the case of a town or village divided into wards to which a part of an adjoining rural municipality or municipalities is attached for school purposes, the board of trustees of such union school district shall by resolution determine in which ward or wards the ratepayers in such part shall vote for the election of school trustees and at elections on other school questions, and in case of no such resolution, then such portion of the rural municipality shall be considered for all election purposes as attached to the ward or wards adjacent. R. S. O., c. 225, s. 90.

Assessors to determine proportion of annual requisition to be levied upon municipalities forming union

75—(1) Once in every three years the assessors of the municipalities in which a union school district is situated, shall after they have completed their respective assessments and before the first day of July, meet and determine what proportion of the annual requisition made by the trustees for school purposes shall be levied upon, and collected from the taxable property of the respective municipalities out of which the union school district is formed, and in the event of the assessors disagreeing as to such proportion, the Inspector in whose district the union school is situate, shall name a third person, who with the assessors aforesaid shall determine the said matter and report the same to the clerks of the respective municipalities, and the decision of a majority shall be final and conclusive for the said period of three years.

Case of union district form-

(2) When the union school district is composed of portions of two adjoining inspectoral districts then on the disagreement of the assessors

ed of portions of two inspectoral districts.

the Inspector of the district concerned containing the greatest number of schools shall name an arbitrator. R. S. O., c 225, s 91.

Confirmation of by-laws for certain purposes.

76. Any by-law passed for the formation, alteration or dissolution of school districts, shall become absolutely legal and valid, and the jurisdiction of any court to question the same shall be deemed to be ousted when such by-law has been submitted to and confirmed by the Department of Education, who shall require notice to be given of such application by the parties applying, by advertisement or otherwise, as they may direct, and the certificate of the Provincial Secretary endorsed on a certified copy of such by-law shall be conclusive evidence of such confirmation, and the provisions of this section may be taken advantage of for the confirmation of any by-law for any of such purposes heretofore passed and not quashed or otherwise declared invalid, and this section shall be deemed to apply to any such by-law. R. S. O., c. 225, s. 92.

Continuation of boundaries of rural districts.

77. In case a portion of the territory composing one or more school districts becomes incorporated as a village or town, the boundaries of such school district or districts shall continue in force and be deemed a union school district, notwithstanding such Act of incorporation, until altered as provided in Section 73 of this Act. R. S. O., c. 225, s. 93.

PUBLIC SCHOOL BOARDS IN CITIES, TOWNS AND VILLAGES.

When village town or city incorporated, old trustees to remain in office until new election.

78—(1) In case any village, town or city, is incorporated, the trustees having jurisdiction over the school property situated within such village, town or city, prior to its incorporation, shall exercise all the powers conferred by this Act, upon the trustees of villages, towns or cities, until a new election of trustees is held, and such trustees shall call a meeting of the ratepayers of such village, town or city, within one month after the date of such incorporation for the election of a new public school board.

New election.

Section 82 to apply to such election.

(2) In calling the meeting of the ratepayers of such newly incorporated village, town or city, the provisions of Section 82 shall be complied with, so far as the same are applicable. R. S. O., c. 225, s. 94.

Two trustees for each ward.

79—(1) For every ward into which any city, town or village is divided, there shall be two school trustees, each of whom, after the first election of trustees, shall continue in office for two years, and until his successor has been elected.

One trustee for each ward to retire annually.

(2) One of the trustees in each ward (to be determined by lot at the first meeting of trustees after their election, which determination shall be entered upon the minutes) shall retire from office at the time appointed for the next annual school election, and the other shall continue in office one year longer, and then retire. R. S. O., c. 225, s. 95; 48 Vic., c. 27, s. 15.

Trustees in village not divided into wards.

80. In every village not divided into wards, there shall be three trustees, whose term of office shall be the same as that of trustees elected at the first meeting in rural school districts. R. S. O., c. 225, s. 96.

Term of office.

81—(1) Every trustee shall continue in office until his successor has been elected, and the new board is organized.

Town or village annexed to city deemed part of city.

(2) When any town or village is annexed to a city, the town or village so annexed shall, for all the purposes of this Act, be deemed to be part of the city. R. S. O., c. 225, s. 96.

Election of trustees in cities, towns and villages.

82—(1) In cities, towns and villages the nomination and election of public school trustees shall be held at the same time and place, and by the same returning officer or officers, and conducted in the same manner as the municipal nominations and elections of aldermen or councillors, as the case may be, and the provisions of The Municipal Act respecting the qualification of electors, the time for opening and closing the poll, the mode of voting, corrupt or improper practices, vacancies

and declarations of office shall *mutatis mutandis* apply to the election of public school trustees.

(2) A separate set of ballot papers shall be prepared by the clerk of the municipality for all the wards or polling sub-divisions, containing the names of the candidates nominated for school trustees, of the same form as those used for councillors, except the substitution of the words "school trustee" for councillors or aldermen, as the case may be, on said ballot papers. R. S. O., c. 225, s. 103; 44 Vic., c. 4, s. 24; 48 Vic., c. 27, s. 16. Ballot papers.

83. Any actual resident ratepayer of the full age of twenty-one years, able to read and write and not disqualified under this Act, shall be eligible to be elected a public school trustee in any city, town or village. R. S. O., c. 225, s. 106. Who may be elected trustee

84. All contestations with regard to the election or qualification of school trustees in cities, towns and villages shall be regulated by the same law as that of municipal councillors and aldermen. All the provisions of the Municipal Act relating to such contestations shall apply *mutatis mutandis* to school trustees. 44 Vic., c. 4, s. 65. Contestations.

85. No resolution, by-law, proceeding or action of any board of trustees shall be invalid or set aside by reason of any person whose election has been annulled or declared illegal, having acted as trustee. 47 Vic., c. 37, s. 20. Setting aside election not to affect actions of board.

DUTIES OF BOARD IN CITIES, TOWNS AND VILLAGES.

86. It shall be the duty of the board of school trustees in cities, towns and villages: Duties of board.

(1) To appoint a secretary and treasurer or secretary-treasurer and one or more collectors, if requisite, of such school fees or rate bills as the board may have authority to charge; Appointment of secretary and collector

(*a*) The collector or collectors, and secretary, and treasurer, or secretary-treasurer (who may be of their own number), shall discharge similar duties, and be subject to similar obligations and penalties and have similar powers as the like officers in the municipality; Powers of secretary, collector, et al.

(2) To provide adequate accommodation, according to the regulations of the Department of Education, for all the children between the ages of six and sixteen, resident in the municipality, as ascertained by the census taken by the municipal council for the next preceding year; To provide adequate accommodation.

(3) To purchase or rent school sites and premises, and to build, repair, furnish and keep in order the school houses and appendages, lands, enclosures and moveable property, and procure registers in the prescribed form, suitable maps, apparatus and prize books, and, if they deem it expedient, establish and maintain school libraries; To provide school premises, apparatus, prize books and library.

(4) To determine the number, kind, grade and description of schools (such as male, female, infant, central or ward schools), to be established and maintained; the teachers to be employed; the terms on which they are to be employed; the amount of their remuneration, and the duties which they are to perform; Kind of schools.

(5) To prepare, from time to time, and lay before the municipal council of the city, town or village, on or before the first day of August an estimate of the sums which they think requisite for all necessary expenses of the schools under their charge; To lay before councils estimate for moneys.

(6) To collect, at their discretion, from the parents or guardians of children attending any public school under their charge, a sum not exceeding twenty cents per month per pupil, to defray the cost of text-books, stationery and other contingencies, and to see that all the pupils in the schools are duly supplied with a uniform series of authorized text-books, and to collect, at their discretion, from the parents or guardians of Trustees may collect a fee from parents. To see that authorized books are used.

children who do not reside or are not assessed within the school district a sum not exceeding one dollar per month for each pupil attending school;

To submit accounts to auditors.

(7) To submit all accounts, books and vouchers to be audited by the municipal auditors, and it shall be the duty of such auditors to audit the same;

To give orders for moneys expended.

(8) To give orders on the treasurer of the public school board for all moneys expended for school purposes;

Model school for teachers.

(9) To constitute, at their discretion, one or more of the public schools of such city to be a model school for the preliminary training of public school teachers therein, subject to the regulations of the Department of Education;

To publish auditor's report.

(10) To publish at the end of every year, in one or more of the public newspapers, or otherwise, the annual report of the auditors, and to prepare and transmit annually, before the 15th January, to the Department of Education, in the form prescribed by said Department, a report signed by the chairman containing all the information required by the regulations of the Department of Education;

To prepare annual report for Department of Education.

School sites.

(11) Every public school board in a city, town or village shall have the same power to take and acquire land for a school site, or for enlarging school premises already held, as the trustees of rural schools; and shall have the same powers in regard to school property generally as are conferred upon the trustees of rural schools by Sub-section 9 of Section 37 of this Act; Provided always, that vacant land only shall be taken in such city, town or village for a school site without the consent of the owner, and in the event of disputes between the owner of the land selected and the trustees, Sections 52 to 60 of this Act shall apply;

Exceptions.

Kindergarten schools.

(12) To provide, if deemed expedient, for children between three and six years of age a course of instruction and training according to the methods practiced in kindergarten schools, subject, however, to the regulations of the Department of Education in that behalf;

Dismissal of refractory pupils.

(13) To dismiss from the school any pupil who shall be adjudged so refractory by the trustees (or by a majority of them) and the teacher that his presence in school is deemed injurious to the other pupils. R.S.O., c. 225, s. 113; 44 Vic., c. 4, s. 39; 46 and 47 Vic., c. 46, s. 11; 47 Vic., c. 37, ss. 12 and 13; 48 V., c. 27, s. 17.

Appointment of superintendent.

(14) To appoint a superintendent for the city, town or village.

SCHOOL CENSUS.

Census.

87. The municipal council of every rural municipality, city, town and village shall cause the assessor or assessors, in preparing his or their annual assessment roll, to set down therein, in separate columns, the number of children in rural municipalities between the ages of five and sixteen, and in cities, towns and villages between the ages of six and sixteen, opposite the name of each person on the assessment roll who are resident with him, and the clerk of the municipality shall furnish the secretary-treasurer of each district, or the secretary of the board of trustees for the city, town or village (as the case may be), and the Public School Inspector with a statement of the total number of children aforesaid in each school district, or in the city, town or village (as the case may be). R.S.O., c. 225, s. 114; 44 Vic., c. 4, s. 83.

Clerk to give copy of assessment to Inspector.

88. The clerk of every municipality shall also, upon request, and free of any charge, furnish the Public School Inspector with a true statement of the assessed value of each school district, as shewn by the revised assessment roll for that year, and also of the several requisitions of the trustees for school moneys. R. S. O., c. 225, s. 116.

SCHOOL ASSESSMENT.

89.—(1) For the purpose of supplementing the Legislative grant, it shall be the duty of the council of each rural municipality, to levy and collect each year, by assessment upon the taxable property within the municipality, a sum equal to twenty dollars for each month, for which school has been kept open in each school district in the municipality during the current year; and for each school district partially included within the municipality, they shall levy and collect in like manner, a proportionate part of twenty dollars per month as fixed in the manner hereinafter provided. A school district which employs more than one teacher, shall receive said sum of twenty dollars per month for each teacher employed. Amounts to be levied by councils of rural municipalities.

(2) From the moneys so levied and collected, the council shall, upon the first day of December following, pay over to each school district, wholly or partially included in the municipality, one-half the sum of twenty dollars per month, or the proportion thereof allotted to such district as hereinbefore provided; and upon the thirty-first day of January following, shall pay over the whole of the balance due to the said trustees, whether the necessary amount has been fully collected or not from the tax levied for the same; Provided that no board of trustees shall be entitled to receive a larger total amount for the school year than twenty dollars for each teacher, for each month within the same that they have actually had a teacher engaged at a salary, and, in case of doubt or dispute as to the number of months, the certificate of the Inspector shall decide. Apportionment of amounts levied.

(3) It shall be the duty of the trustees of each school district wholly situated in a municipality, to lay before the council, at its first meeting after the thirty-first day of July in each year, a statement of the number of months in the current school year, during which they have kept and will keep school open, and the number of teachers employed; and before the thirty-first day of January following, shall notify the clerk of the municipality if they have failed to keep a teacher engaged as so stated by them, and, in such case, give the actual number of months they have had such teacher engaged. Returns by trustees to municipal council as to time school kept open, etc.

(4) In the case of union school districts the municipal council of each municipality of which the union school district is composed shall levy and collect upon the taxable property of the municipality the said sum in the proprotion which the assessment of the part of such union school within the municipality bears to the whole assessment of such union school district, as equalized under Section 75 of this Act. Levies for union school districts.

(5) Any board of school trustees that fails to notify their council, in due time, of the number of months their school is to be kept in operation during any school year, as hereinbefore required, shall not be entitled to receive a larger amount in such year from the municipal levy than the council may, in their discretion, fix for them; and any board of trustees failing to keep a teacher under engagement the full time stated by them, shall not be entitled to receive their second instalment of school moneys due on January thirty-first, until they have notified the clerk of the municipality of the actual time such teacher has been under engagement; any board of trustees wilfully making a false statement in regard to such time shall forfeit their second instalment. Penalty for not making the returns mentioned in sub-sec. 3.

(6) Any moneys collected by a council from a general levy for school purposes, that remain over in any year after all due payments therefrom have been made to the school districts entitled to the same, shall be deposited in some chartered bank by the said council, and afterward used only to pay or advance moneys to school districts within the muni- Disposition of balance after making above mentioned payments.

cipality in the year or years following. 48 Vic., c. 27, s. 9; 50 Vic., c. 18, ss. 4 and 5; 51 Vic., c. 31, s. 2; 52 Vic., c. 5, s. 1; 52 Vic., c. 21, s. 1; R. S. O., c. 225, s. 117.

Special levy.

90 The council of every rural municipality shall also levy on the taxable property in each school district, the sum of money required by such school district in addition to the Legislative grant and the general municipal levy as above provided. In the case of union school districts, the council of each municipality of which the union district is composed shall levy and collect, as aforesaid, said sum in the proportion in which the assessment of the part of such union district within the municipality bears to the whole assessment of such union district as equalized under Section 75 of this Act. 48 Vic., c. 27, s. 10; 50 Vic., c. 18, ss. 6 and 7.

School taxes to be a debt.

91. All school taxes or moneys actually collected or due by a municipal council remaining unpaid to the trustees after the date fixed by this Act for the payment of the same, shall be a debt due by the council to the trustees. 50 Vic., c. 18, s. 9.

City, town or village council to levy sums required for school purposes.

92. The municipal council of every city, town and village shall levy and collect upon the taxable property within the municipality, in the manner provided in this Act and in the Municipal and Assessment Acts, such sums as may be required by the public school trustees for school purposes. R. S. O., c. 225, s. 118.

What property to be taxable.

93. The taxable property in a municipality for school purposes shall include all property liable to municipal taxation, and also all property which has heretofore been or may hereafter be exempted by municipal council from municipal taxation, but not from school taxation. No municipal council shall have the right to exempt any property whatsoever from school taxation. 44 Vic., c. 4, ss. 27 and 29; 47 Vic., c. 37, s. 10; 50 Vic., c. 18, s. 8.

Assessors to value lands situated in each district.

94. Where the land or property of any individual or company is situated within the limits of two or more school districts, each assessor appointed by any municipality shall assess and return on his roll, separately, the parts of such land or property, according to the divisions of the school districts within the limits of which such land or property is situate. R. S. O., c. 225, s. 119.

A resident of one district sending his children to another district.

95. Any person residing in one school district and sending his children to the school of a neighbouring one, shall, nevertheless, be liable for the payment of all rates assessed on his taxable property for the school purposes of the district in which he resides, as if he sent his children to the school of such district. R. S. O., c. 225, s. 124.

School moneys —when to be paid over.

96. All sums levied and collected by the municipal council of any municipality for school purposes shall be paid over to the secretary-treasurer of the board of trustees, without any deduction whatever, from time to time as collected, or sooner if they so desire. R. S. O., c. 225, s. 125.

Payments to be made by treasurer.

97. The secretary-treasurer shall pay on the order of the board of trustees all sums of money due and payable for teachers' salaries, and all other school purposes. R. S. O., c. 225, s. 126.

BORROWING MONEY AND ISSUING DEBENTURES.

Borrowing money in rural districts to the amount of $700 or less.

98. (1) The ratepayers of any rural school district may at a public meeting duly called, require the trustees to borrow any sum of money not exceeding the sum of seven hundred dollars (or in case the school district is already in debt, such a sum as will not increase the debt of the district beyond the sum of seven hundred dollars) for the purchase of school sites or erection and furnishing of school houses and their appendages or the purchase thereof, or the purchase or erection of a teacher's residence, or for the purpose of paying off any debt, charge or lien against the school house or teacher's residence, or against the corporation.

(2) Notice of such meeting shall be duly given by posting up on the door of the school house (if any) and in two or more other conspicuous places within the school district, at least two weeks previous to such meeting, a notice in the form or to the effect of that set forth in Schedule A to this Act. Notice of the meeting.

(3) A majority of the ratepayers of any such school district present at such meeting shall be sufficient to authorize such loan, along with the assent of the Department of Education. 44 Vic., c. 4, s. 104. Majority to be sufficient.

99. In the case of school districts in cities, towns and villages, and of rural school districts where the amount of the loan is greater than that authorized by the preceding section, it shall be necessary for the trustees to pass a by-law and submit the same to the ratepayers, to be voted on in the manner provided in the Municipal Act with regard to by-laws creating debts. All the provisions of the Municipal Act with respect to voting by electors upon by-laws creating debts shall apply (*mutatis mutandis*) to such school by-laws. It shall be the duty of the municipal council to submit any such by-law to vote on being requested to do so by the board of school trustees. In the case of rural school districts, the persons entitled to vote on such by-laws shall be all the owners of real estate within the district whose names appear upon the last revised municipal list of electors. Such by-law shall require the same majority as a municipal by-law creating a debt. The expense of submitting such by-law shall be paid to the municipal council by the trustees of the school district in the case of rural school districts. Borrowing money in cities, towns and villages and where amount exceeds $700.

100.—(1) No loan under two thousand dollars shall be made for any term exceeding ten years, nor shall a loan be made, in any case, for a term exceeding twenty years. Terms of loan under $2,000.

(2) The principal of such loan shall be made payable by annual instalments, unless with the sanction of the Department of Education. All school boards that have heretofore issued, or may hereafter issue, debentures not payable in instalments, shall raise an annual sinking fund sufficient to meet such debentures when due; such sinking fund may be invested with the Provincial Treasurer, who shall pay interest upon the same at the rate of 4 per cent. per annum, compounded annually. Such sinking fund shall not be invested in any security, unless approved by the Lieutenant-Governor in Council. 48 Vic., c. 27, s. 11. Principal to be payable in annual instalments. Sinking fund to be raised. Investment of sinking fund must be approved by Lt.-Governor in Council.

101. Any school district, having obtained the assent of the Department of Education to a loan, may issue debentures therefor in the form set forth in Schedule B to this Act, to secure the amount of the principal and interest of such loan, and the said debentures shall be signed by the secretary-treasurer, and countersigned by at least one trustee, and shall create a charge against all the school revenues of the district. The coupons attached to said debentures need be signed by the secretary-treasurer only. 44 Vic., c. 4, s. 104 (*f*). School districts may issue debentures.

102. No board of school trustees in a rural municipality, city, town or village, shall have the right to include in their estimate or levy for school purposes for any year, any amount for any of the purposes for which the trustees of rural school districts have power to borrow as provided in Section 98 hereof, if, thereby the special school rate for such school district is increased beyond eight mills in the dollar. Limit of annual rate fixed as to certain matters.

103. Notwithstanding any alteration which may be made in the boundaries of any school district, the taxable property situated in the school district, at the time when such loan was effected, shall continue to be liable for the repayment of the loan. R.S.O., c. 225, s. 131. Liability for loan.

104. Any rural school corporation may, with the consent of the ratepayers of their school district, first had and obtained at a special meeting duly called for that purpose, by resolution, authorize the borrowing School corporations may borrow surplus moneys.

from any municipal corporation of any surplus moneys, for such term and at such rate of interest as may be set forth in such resolution, for any of the purposes mentioned in Section 98 of this Act, and any sum or sums so borrowed shall be applied to that purpose, and that only. No sum greater than seven hundred dollars shall be so borrowed. R.S.O., c. 225, s. 134.

School loans require the assent of Department of Education.

105.—(1) All school loans shall require the assent of the Department of Education, and the proceedings to obtain same shall be as follows:—

Form of minutes of school meeting therefor.

(2) The minutes of any meeting of ratepayers of a school district called to consider the propriety of borrowing money, as mentioned in the said Section 98, shall be headed with a statement in the following form, or to the same effect:—

"Minutes of a public meeting of the ratepayers of the school district No. held the day of , 188 , in pursuance of notice given as required by 'The Public Schools Act,' and called for the purpose of considering (and advising the trustees of said school district in respect to) the question of raising or borrowing a sum of money for the purpose of (here state the purpose for which the loan is intended as in the published or posted notice).

"The said meeting having been organized by the appointment of Mr. A. B. as chairman, and Mr. C. D. as secretary, the following proceedings were had:

"It was moved by Mr. etc." (the motions and formal proceedings of the meeting to be then given, certified at the foot thereof to be correct, and signed by the chairman and secretary).

(*a*) The said minutes shall also contain a list of the names of the ratepayers who voted at the said meeting upon the question of raising or borrowing money, distinguishing those who are freeholders from those who are not, and recording the vote given by each person for or against the said question. 46 and 47 Vic., c. 46, s. 17; 47 Vic., c. 54, s. 4.

Copy of said minutes to be given to secretary-treasurer of trustee board duly attested to.

(3) A copy of the said minutes shall be given to the secretary-treasurer of the board of trustees of the district for the information of the said board, and the original, with a statutory declaration endorsed thereon or attached thereto, taken before a justice of the peace or other person authorized to take declarations under the statute, with a copy of the notice calling such meeting, proving the posting of said notice as required by the Act, shall be given or transmitted to the Department of Education. Said Department shall decide whether such loan is a proper and necessary one. If said Department, having regard to the means of the ratepayers of such school district to repay the same, approves of such loan, said minutes, proof and other documents connected therewith shall be transmitted to the Provincial Secretary, together with a certificate or note of the approval thereof endorsed thereon, signed by the chief clerk or a member of said Department. 46 and 47 Vic., c. 46, s. 18.

Sec.-treas. of trustee board to transmit statement to Department of Education.

(4) It shall be the duty of the secretary-treasurer of the board of school trustees of any school district, upon being made aware that a loan, as aforesaid, had been sanctioned by the ratepayers, to at once transmit to the Department of Education a statement, duly certified under the hand of said secretary-treasurer and the seal of the said board of trustees, to be correct, showing the amount of the assessed value of the real and personal estate of such school district; its debenture indebtedness, including the amount proposed to be added under such by-law then being submitted for approval; its indebtedness other than under said debentures; the total rate required for all purposes, and the interest past due, if any, on the indebtedness of said school district. 46 and 47 Vic., c. 46, s. 19.

(5) A statement embodying the information mentioned in the last preceding sub-section as to the assets and liabilities of the school district, shall be written or printed on the back of each debenture issued under the authority of the Act; and, following such statement, shall also be written or printed the words "Issued under the provisions of the Public Schools Act." 46 and 47 Vic., c. 46, s. 20. Said statement to be endorsed on back of each debenture. Words endorsed thereunder

(6.) Upon the assent of the Department of Education being obtained to such loan, and upon presentation within twelve months thereafter to the Provincial Secretary, or Acting Provincial Secretary, of the debenture or debentures issued to raise the same, the said Provincial Secretary, or Acting Provincial Secretary (unless such assent has in the meantime been withdrawn), shall sign such debenture or debentures under the statement or endorsement thereon hereinbefore mentioned, and shall affix the great seal of the Province thereto, and such signature and seal shall be conclusive evidence that all the formalities in respect to said loan, and the issue of such debenture, have been complied with, and of the correctness of the statement or endorsement thereof, and the legality of the issue of such debenture shall be thereby conclusively established, and its validity shall not be questionable by any court in this Province, but the same shall, to the extent of the revenues of the school district issuing the same, be a good and indefeasible security in the hands of any *bona fide* holder thereof. 46 and 47 Vic., c. 46, s. 21; 47 Vic., c. 37, s. 24. When Provincial Secretary is to sign and seal said debentures. Effect thereof.

(7.) The Department of Education, when the question of any school loan shall be before it for assent thereto, may take into consideration the effect of the proposed loan upon the security of any previous loan, in case the new proposed loan shall be repayable before a former one, or former ones, and may withhold such assent to such new loan, if it considers that the security of the holders of any existing debenture loan of such school district was likely to be rendered insufficient, by reason of the date of payment of the proposed new loan being prior to that of any then existing debenture debt of such district. 46 and 47 Vic., c. 46, s. 21. Department of Education may refuse to sanction loan.

(8.) The provisions of this section shall apply (*mutatis mutandis*) to by-laws passed under Section 99 of this Act. This sec. to apply to by-laws passed under sec. 99.

106. The provisions of chapter 24, 44 Victoria, respecting registration of debentures, shall not apply to any debenture certified to by the Provincial Secretary under the provisions of this Act, nor to any by-law or resolution respecting the issue of such debentures. 46 and 47 Vic., c. 46, s. 27. Application of 44 Vic., Cap. 24.

107—(1) At any time in any one year before the estimate of a school district has been prepared by a board of school trustees or handed to the clerk of the municipality, or before the moneys have been paid over to the board by the municipality a board of school trustees in any city, town, village or rural municipality, may borrow moneys upon the credit of the board, and give the promissory note or notes of the board for the same or for the moneys heretofore borrowed to such an amount as is legally authorized; Provided, however, that no such moneys shall be borrowed or notes given to an amount exceeding in the aggregate one-half of the said estimate for the year, if such estimate has been made, nor one-half the amount of the said estimate for the next preceding year, if such estimate has not been made for the current year; and provided also, that such moneys shall only be borrowed or notes given upon a by-law or by-laws of the board, which shall recite the amounts previously borrowed and the notes previously given therefor and any sums paid thereon, but any error or omission in reciting such sums or notes shall not invalidate such by-law as against a *bona fide* lender or Loans for current expenses. Proviso.

payee or holder for value of any such note, not having notice of such error or omission.

Application of sums levied.

(2) Upon the payment to the board by a municipality of any portion of the sums to be levied for the trustees by a municipality, it shall be the duty of the board of school trustees to apply one-half of such sum so paid to it to the reduction of the debt or debts incurred for money so borrowed or upon such note or notes, or in the event of no such debt or note or not sufficient thereof to exhaust the one-half of the sum so paid being then overdue, then to deposit such half, or the unexhausted portion thereof, in some chartered bank, and to apply the same to such debts or notes as they become due and payable. 47 Vic., c. 37, s. 27.

LEGISLATIVE GRANT.

Legislative grant, how paid.

108. (1) The sum of seventy-five dollars shall be paid semi-annually for each teacher employed in each school district which has been in operation during the whole of the previous term, and a proportionate part thereof in case the school has been in operation for a part of the same; and in the case of newly established schools, to those which have been in operation for at least one month of said term; Provided that, except in the case of new school districts, no school shall be entitled to receive a larger amount than one-half the sum required by the trustees thereof for its current expenses during the term for which such grant is made; Provided further, that a reduction in the amount to be made may, in the discretion of the Department of Education, be made in the case of any school district in which the average attendance of the resident pupils enrolled for the term has been less than forty per cent. of such enrolled number.

Returns must be transmitted.

(2) No school shall be entitled to receive any portion of the Legislative grant whose trustees have neglected to transmit within the time provided by law in the preceding year the annual or semi-annual returns as required by the regulations of the Department of Education, or whose school has not been kept in operation at least six months during the school year, unless with the sanction of the Department of Education. 48 Vic., c. 27, s. 1.

School must be conducted according to law.

(3) Any school not conducted according to all the provisions of this or any Act in force for the time being, or the regulations of the Department of Education or the Advisory Board, shall not be deemed a public school within the meaning of the law, and such school shall not participate in the Legislative grant. 48 Vic., c. 27, s. 3.

Payments to be made to the order of the teacher.

109. All payments to school districts shall be made to the order of the teacher or teachers of the school unless it be shown that the salary of such teacher or teachers has been paid in full.

Balance of education grant to be distributed.

110. In case after paying said grant of seventy-five dollars per half year, and paying all the expenses and salaries of the Department of Education, the balance (if any) of the grant for education shall be divided among the school districts in the same proportion in which said school districts have received said grant for the current year.

SCHOOL CORPORATIONS.

Trustees a corporation.

111.—(1) The trustees of every school district shall be a corporation under the name of "The School District of Number ."

Names.

(2.) The names under which the corporations of school districts existing at the date of the coming into force of this Act are known, shall continue to be their respective corporate names until altered by the Department of Education under the provisions of this section, and no change in

the corporate name of any school district made in accordance with the provisions of this Act shall affect any obligations, rights, actions or property incurred, established, done or acquired prior to such change.

(3) The number of each school district shall be furnished to them by the Department of Education. R. S. O., c. 225, s. 33; 48 Vic., c. 27, s. 23. Number.

(4) The Department of Education may change the corporate name of any school district and in such case the seal theretofore used by such district shall continue to be the seal thereof until changed by the trustees. Change of name.

DISQUALIFICATION OF SCHOOL TRUSTEES.

112. No person shall be eligible to be elected or serve as a school trustee who is not a resident ratepayer of the school district he proposes to represent. 44 Vic., c. 4, s. 53: 47 Vic., c. 37, s. 17; 48 Vic., c. 27, s. 7. Trustee must be resident ratepayer.

113. No person convicted of felony, or of an infamous crime, shall be eligible to be elected or serve as a school trustee. 44 Vic., c. 4, s. 54. Persons convicted of felony are disqualified.

MEETING OF BOARDS OF SCHOOL TRUSTEES.

114. The members of every board of school trustees shall hold their first meeting on the first Wednesday in January following the election, at the hour of eight o'clock in the evening, at the usual place of meeting of such board, and no business shall be proceeded with at such first meeting except the appointment of a chairman and such other business as may be necessary for the organization of such board. R. S. O., c. 225, s. 107. First meeting of board.

115. At the first meeting in each year of every public school board, the secretary of such board shall preside, or, if there be no secretary, the members present shall select one of themselves to preside at the election of chairman, and the member so elected to preside may vote as a member. R.S.O., c. 225, s. 108. President at first meeting.

116. In case of an equality of votes at the election of chairman of any such board, the member who is assessed as a ratepayer for the largest sum on the last revised assessment roll shall have a second or casting vote in addition to his vote as a member. R.S.O., c. 225, s. 109. Casting vote.

117. Subsequent meetings of the board shall be held at such times and places as may from time to time be fixed by resolution of the board. R.S.O., c. 225, s. 110. Subsequent meetings of board.

118. The chairman of the board shall preside, or in his absence any other person appointed to act as chairman by the majority of those present, and such chairman or person so acting may vote with the other members on all questions, and any question on which there is an equality of votes shall be deemed to be negatived. R.S.O., c. 225, s. 111; 44 Vic., c. 4, s. 38. Presiding officer of board.

119. A majority of the members of such board, when present at any meeting, shall constitute a quorum, and the vote of the majority of such quorum shall be valid to bind the corporation. R.S.O., c. 225, s. 112. Quorum of school boards, etc.

120. The majority at any meeting of school trustees shall have power to decide all questions. Majorities shall decide.

LIABILITY FOR SCHOOL MONEYS.

121. The council of every city, town, village and rural municipality, shall be responsible to Her Majesty, and to all other persons interested, that all school moneys coming into the hands of the treasurer of the city, town, village, or rural municipality, in virtue of his office, shall be by him duly paid over and accounted for, according to law. R.S.O., c. 225, s. 145. Council responsible on default of treasurer, etc.

Treasurer, etc., responsible to municipality, etc.

122. The treasurer and his sureties shall be responsible and accountable for such moneys in like manner to the city, town, village, or rural municipality, and any bond or security given by them for the duly accounting for, and paying over moneys coming into his hands, belonging to the city, town, village, or rural municipality, shall be taken to apply to all public school moneys, and may be enforced against the treasurer or his sureties, in case of default on his part. R.S.O., c. 225, s. 146.

Bonds to apply to school moneys, etc.

123. The bond of the treasurer and his sureties shall apply to school moneys, and in case of any default, Her Majesty may enforce the responsibility of the city, town, village, or rural municipality, either by stopping a like amount out of any public moneys payable to the city, town, village, or rural municipality, or to the treasurer thereof, or by action against the corporation. R. S. O., c. 225, s. 147.

City, etc., responsible for default of treasurer, etc.

124. Any person aggrieved by the default of the municipal treasurer, may recover from the corporation of any city, town, village, or rural municipality, the amount due or payable to such person as money had and received to his use. R. S. O., c. 225, s. 148.

TEACHERS.

Valid agreements with teacher.

125. All agreements between trustees and teachers, to be valid and binding, shall be in writing, signed by the parties thereto, and sealed with the corporate seal of the trustees, and such agreements may lawfully include any stipulation to provide the teacher with board and lodging. R. S. O., c. 225, s. 151; 44 Vic., c. 4, s. 76.

Qualified teacher defined.

126. No teacher of a public school shall be deemed legally qualified who does not at the time of his engaging with the trustees, and during the period of such engagement, hold a legal certificate of qualification. R. S. O., c. 225, s. 152.

Duties of public school teacher.

127. It shall be the duty of every teacher of a public school:

To teach according to law.

(1) To teach, diligently and faithfully, all the branches required to be taught in the school, according to the terms of his engagement with the trustees, and according to the provisions of this Act, and the regulations of the Department of Education and the Advisory Board;

To keep the register of the school.

(2) To keep, in the prescribed form, the general entrance and the daily class, or other registers of the school, and to record therein the admission, promotion, removal, or otherwise, of the pupils of the school;

To maintain order and discipline.

(3) To maintain proper order and discipline in his school, according to the prescribed regulations;

To keep a visitors' book.

(4) To keep a visitors' book (which the trustees shall provide) and enter therein the visits made to his school, and to present said book to every visitor and request him to make therein any remarks suggested by his visit;

To give access to register and visitors' book.

(5) To give the trustees and visitors access at all times, when desired by them, to the registers and visitors' book appertaining to the school;

To deliver up register and key.

(6) To deliver up any school registers, visitors' book, school house key, or other school property in his possession on the demand or order of the majority of the trustees employing him;

In case of refusal.

(7) In case of his wilful refusal so to do he shall not be deemed a qualified teacher until restitution is made, and shall also forfeit any claim which he may have against the said trustees;

To hold public examinations.

(8) To hold during each term a public examination of his school, of which he shall give due notice to the trustees of the school, to any school visitors who reside in or adjacent to the school, and through the pupils to their parents or guardians;

To furnish information to

(9) To furnish to the Department of Education, or to the School Inspector, from the trustees' report or otherwise, any information which

it may be in his power to give respecting anything connected with the operations of his school, or in any wise affecting its interests or character; the Department and Inspector.

(10) To prepare, so far as the school registers supply the information, such reports of the corporation employing him as are required by the regulations of the Department of Education; To prepare reports.

(11) To notify the medical health officer of the municipality, or where there is none to notify the local board of health or the trustees, whenever he has reason to believe that any pupil attending school is affected with or exposed to smallpox, cholera, scarlatina, diphtheria, whooping-cough, measles, mumps or other contagious disease, and to prevent the attendance of all pupils so exposed, or suspected of being exposed, until furnished with a written statement of the health officer, or of the local board of health, or of a physician, that such contagious diseases did not exist, or that all danger from exposure to any of them had passed away. R.S.O., c. 225, s. 153; 44 Vic., c. 4, s. 75. To take precautions against spread of infectious diseases.

128. Every qualified teacher of a public school employed for any period not less than three months shall be entitled to be paid his salary in the proportion which the number of teaching days during which he has taught in the calendar year bears to the whole number of teaching days in such year, unless otherwise expressly agreed. R.S.O., c. 225, s. 154. Proportion of salary to which teacher entitled.

129. In case of sickness, certified by a medical man, every teacher shall be entitled to his salary during such sickness, for a period not exceeding four weeks for the entire year; which period may be increased at the pleasure of the trustees. R.S.O., c. 225, s. 157. Case of sickness. Four weeks allowed.

130. Any teacher whose agreement has expired with a board of trustees, or who is dismissed by them, shall be entitled to receive forthwith all moneys due him for his services as teacher, while employed by the said board; if such payment be not made by the trustees or tendered to the said teacher by them, he shall be entitled to recover from the said trustees the full amount of his salary due and unpaid with interest, until payment is made, by a suit in a court of competent jurisdiction. R.S.O., c. 225, s. 158; 48 Vic., c. 27, s. 13. What teacher entitled to recover.

CERTIFICATES.

131. Every certificate to teach a public school shall be ranked as of the first, second or third class, and shall be issued under the regulations of the Department of Education and the Advisory Board, only to such persons as (*a*) furnish satisfactory proof of good moral character, (*b*) and, if males, are at least eighteen years of age, or if females, sixteen years of age, and (*c*) pass the examinations prescribed by the Department of Education and Advisory Board. R.S.O., c. 225, s. 159. Three classes of certificates.

132. The Inspector of public schools may suspend the certificate of any teacher under his jurisdiction for inefficiency, misconduct, or a violation of the regulations of the Department of Education or Advisory Board or of this Act. In every case of suspension, he shall notify in writing the trustees concerned, and the teacher, of the reasons for such suspension. R.S.O., c. 225, s. 164. Suspension of certificates for misconduct, etc.

133. Any teacher who enters into an agreement at common law with a board of trustees, and who wilfully neglects or refuses to carry out such agreement shall, on the complaint of any board of school trustees, be liable to the suspension of his certificate by the Inspector under whose jurisdiction he may be for the time being. R. S. O., c. 225, s. 165. Suspension of certificate for breach of agreement.

134. The Inspector shall in all cases of suspension notify the Department of Education, and the Department shall as soon as possible decide what shall be done in the premises. Inspector to notify Department of suspension.

INSPECTORS.

Qualification for appointment as inspector.

135. No person shall be eligible to be appointed an Inspector who does not hold a legal certificate of qualification as Inspector, granted according to the regulations of the Department of Education and Advisory Board, and no person who is a teacher or trustee of any public or high school shall be eligible for an appointment as Inspector so long as he remains such teacher or trustee. R. S. O., c. 225, s. 175.

Inspector not to hold other offices.

136. No inspector of schools shall, during his tenure of office, engage in or hold any other employment, office or calling which would interfere with the full discharge of his duties as Inspector as required by law. R. S. O., c. 225, s. 188.

Inspector to swear witnesses in certain cases.

137. In cases where an Inspector requires the testimony of witnesses to the truth of any facts alleged in any complaint or appeal made to him or to the Department of Education, it shall be lawful for such Inspector to administer an oath to such witnesses, or to require their solemn affirmation, before receiving their testimony. R.S.O., c. 225, s. 189.

ALLOWANCE TO ARBITRATORS.

Allowance to Arbitrators and Inspectors

138.—(1) All persons engaged as arbitrators on any matter arising under this Act, and Inspectors who are acting as arbitrators, while engaged in investigating and deciding upon school complaints and disputes, shall be entitled to the sum of two dollars and fifty cents per day and actual travelling expenses.

Award.

(2) In making their award the arbitrators shall among other things determine the liabilities of the parties concerned therein for the costs of such arbitration, and such determination shall be final and conclusive. R. S. O., c. 225, s. 190.

NON-RESIDENT PUPILS.

Admission of non-resident pupils.

139. It shall be the duty of the trustees of every rural school district and of every public school board to admit, on payment in advance of fees not exceeding fifty cents per pupil for every month, any non-resident pupils who reside nearer to such school than the school in their own district; and in case of dispute as to the distance from the school the Inspector shall decide; but no trustee shall be required to admit any such children, unless they have sufficient school accommodation and a sufficient teaching staff besides what is required for the children attending such school from their own district.

Proviso.

HOLIDAYS.

Holidays.

140. Every Saturday, every statutory holiday, and every day proclaimed a holiday by the municipal authorities in which the school district is situated, shall be a holiday in the public schools. R. S. O., c. 225, s. 204; 44 Vic., c. 4, s. 100.

AUTHORIZED BOOKS.

Only authorized text books to be used.

141. No teacher shall use or permit to be used as text books any books in a model or public school, except such as are authorized by the Advisory Board, and no portion of the legislative grant shall be paid to any school in which unauthorized books are used. R. S. O., c. 225, s. 205.

Change of text books.

142. Any authorized text book in actual use in any public or model school may be changed by the teacher of such school for any other authorized text book in the same subject on the written approval of the trustees and the inspector, provided always such change is made at the beginning of a school term, and at least six months after such approval has been given. R. S. O., c. 225, s. 206.

143. In case any teacher or other person shall negligently or wilfully substitute any unauthorized text book in place of any authorized text book in actual use upon the same subject in his school, he shall for each such offence, on conviction thereof before a Police Magistrate or Justice of the Peace, as the case may be, be liable to a penalty not exceeding $10 payable to the municipality for public school purposes, together with costs, as the Police Magistrate or Justice may think fit. R.S.O., c. 225, s. 207. Substitution of unauthorized text books.

LIBRARIES.

144. The council of every municipality may raise by assessment such sums as it may judge expedient for the establishment and maintenance of a public school library, subject to the regulations of the Department of Education. R. S. O., c. 225, s. 208. Establishment of libraries.

SPECIAL INQUIRIES.

145. The Department of Education shall have power to appoint one or more persons, as the Department from time to time deems necessary, to inquire into and report to the Department upon any school matter; such person or persons shall be entitled to such remuneration out of any moneys appropriated by the Legislature for that purpose as may be deemed just and equitable, considering the nature and extent of the duties to be performed. Such person or persons, or any of them, shall have power to administer oaths to witnesses, or require them to make solemn affirmation of the truth of the matters they may be examined upon. R. S. O., c. 225, s. 226. Commission of enquiry. Remuneration of Commissioners. Power to commissioners to administer oaths.

146. In any matter of inquiry which the Department of Education is by law authorized to institute, make or direct, a writ or writs of subpœna *ad testificandum* and also *duces tecum* may issue from the Court of Queen's Bench upon the *præcipe* of the Department of Education therefor, containing the names of the witnesses intended to be summoned thereby, to be directed to such person or persons for him or them to attend and give evidence under oath, at such times and places, and before such person or persons as the Department of Education shall appoint, and any default of any such person in obeying any such subpœna shall be punishable as in the like case in any action or cause in the said court. R.S.O., c. 225, s. 227. Compelling attendance of witnesses.

SCHOOL VISITORS.

147.—(1) All clergymen, members of the Advisory Board, Judges, members of the Legislature and members of municipal councils, shall be school visitors in the rural municipalities, cities, towns and villages where they respectively reside. Public school visitors defined.

(2) A clergyman shall be a school visitor only in the rural municipality, town, city or village where he has pastoral charge. R.S.O., c. 225, s. 238; 44 Vic., c. 4, s. 80. Clergymen as visitors.

148. Each of the school visitors may visit the public schools in the rural municipality, city, town or village, as aforesaid. They may also attend the quarterly examination of schools, and, at the time of any such visit, may examine the progress of the pupils, and the state and management of the school, and give such advice to the teacher and pupils, and any others present, as they think advisable, in accordance with the regulations and instructions provided in regard to school visitors. R.S. O., c. 225, s. 239. Their authority to visit public schools.

149. A general meeting of the visitors may be held at any time or place appointed by any two visitors, on sufficient notice being given to the other visitors in the rural municipality, city, town or village. R.S.O., c. 225, s. 240; 44 Vic., c. 4, s. 81. General meeting of school visitors.

Authority at such meetings

150. The visitors thus assembled may devise such means as they deem expedient for the efficient visitation of the schools, and for promoting the establishment of libraries and the diffusion of useful knowledge. R.S O., c. 225, s. 241.

PENALTIES AND PROHIBITIONS.

Penalty for making a false declaration.

151. No person shall wilfully make a false declaration of his right to vote at any school meeting or election of school trustees; and any person convicted of a contravention of this section, upon the complaint of any person, shall be punishable by a penalty of not less than $5 or more than $10, to be sued for and recovered with costs before a justice of the peace by the public school trustees of the city, town, village or school district, for its use. R.S.O., c. 225, s. 243; 44 Vic., c. 4, s. 112.

Fine on disqualified person acting as trustee.

152. If any person elected as a school trustee attends any meetings of the school board as such, after being disqualified under this Act, he shall be liable to a penalty of $20 for every meeting so attended. R.S.O., c. 225, s. 244.

Trustees not to hold certain offices.

153. No trustee of a school district shall hold the office of Public School Inspector, or be a master or teacher within the district of which he is a trustee; nor shall the master or teacher of any public or high school hold the office of trustee, nor shall an Inspector be a teacher or trustee of any public or high school while he holds the office of Inspector. R.S.O., c. 225, s. 245; 44 Vic., c. 4, s. 42.

Seat vacated by conviction for crime, etc.

154. Any trustee who is convicted of any felony, or becomes insane, or absents himself from the meetings of the board for three consecutive months, without being authorized by resolution entered upon its minutes, or ceases to be an actual resident within the school district for which he is a trustee, shall *ipso facto* vacate his seat, and the remaining trustees shall declare his seat vacant and forthwith order a new election. R.S.O., c. 225, s. 246; 44 Vic., c. 4, ss. 44, 45 and 46, and 49.

Seat vacated by interest in contract with corporation.

155. Any trustee who has any pecuniary interest, profit or promise, or expected benefit in or from any contract, agreement or engagement, either in his own name or in the name of another, with the corporation of which he is a member, or who receives or expects to receive any compensation for any work, engagement, employment or duty, on behalf of such corporation, except as secretary-treasurer, or for a school site, shall *ipso facto* vacate his seat, and every such contract, agreement, engagement or promise shall be null and void, and the remaining trustees, or a majority of them, shall declare the seat vacant and forthwith order a new election. R.S.O., c. 225, s. 247; 44 Vic., c. 4, s. 41; 47 Vic., c. 37, s. 14.

Penalty for not calling school meetings.

156. In case any annual or other rural school meeting has not been held for want of the proper notice, every trustee or other person whose duty it was to give the notice shall forfeit the sum of $5, to be sued for and recovered before a justice of the peace by any resident inhabitant in the rural school district, for his own use. R.S.O., c. 225, s. 248.

Penalty for disturbing a school or school meeting.

157. Any person who wilfully disturbs, interrupts or disquiets the proceedings of any school meeting authorized to be held by this Act, or any one who wilfully interrupts or disquiets any public school established and conducted under authority of this Act, or other school, by rude or indecent behaviour, or by making a noise either within the place where such school is kept or held or so near thereto as to disturb the order or exercises of the school, shall, for each offence, on conviction thereof, forfeit and pay for public school purposes to the school district within which the offence was committed, a sum not exceeding $20, together with the costs of the conviction. R.S.O., c. 225, s. 249; 44 Vic., c. 4, s. 114.

158. Any person elected to the office of school trustee who refuses to serve as such, shall forfeit the sum of $5 for the use of the school district, and his neglect or refusal to take the declaration of office within one month after his election, if resident at the time within the district, shall be construed as such refusal, after which another person shall be elected to fill the place; but no school trustee shall be re-elected, except by his own consent, during the four years next after his going out of office. R.S.O., c. 225, s. 250; 44 Vic., c. 4, s. 43; 47 Vic., c. 37, s. 15. Penalty for refusing to act as trustee. Trustee exempt for four years.

159. Every person so chosen who has not refused to accept the office, and who at any time refuses or neglects to perform its duties, shall forfeit the sum of $20 to be sued for and recovered before a justice of the peace by the trustees of the school district, or by any person whatsoever for its use, as authorized by this Act. R. S. O., c. 225, s. 25; 44 Vic., c. 4, s. 107 and 115; 47 Vic., c. 37, s. 26. Penalty for refusing to perform duties

160. If the trustees of any public school wilfully neglect or refuse to exercise all the corporate powers vested in them by this Act, for the fulfilment of any contract or agreement made by them, any trustee or trustees so neglecting or refusing to exercise such power shall be held to be personally responsible for the fulfillment of such contract or agreement. R.S.O., c. 225, s. 252; 44 Vic., c. 4, s. 116. Penalty for refusing to exercise corporate powers

161. Any chairman who neglects to transmit to the Inspector a minute of the proceedings of an annual or other rural school meeting over which he has presided, within ten days after the holding of such meeting, shall be liable on the complaint of any ratepayer, to a fine of not more than $5, to be recovered as provided by this Act. R.S.O., c. 225, s. 253. Penalty on chairman for neglect.

162. If any trustees of any school district refuse or neglect to take proper security from the secretary-treasurer, or other person to whom they entrust school moneys, they shall be held personally responsible for the moneys. R.S.O., c. 225, s. 254; 47 Vic., c. 37, s. 18. Liability for neglect to take security.

163. If any part of the public school fund or moneys is embezzled or lost, through the dishonesty or faithlessness of any trustee, secretary-treasurer, or other person to whom it has been entrusted, and proper security against the loss has not been taken, the person or persons whose duty it was to have exacted the security shall be personally responsible for the sums so embezzled or lost; and such sums may be recovered from him or them by the person entitled to receive the same by action in any court having jurisdiction to the amount, or by information at the suit of the Crown. R.S.O., c. 225, s. 255. Responsibility in case of lost school moneys.

164. No secretary-treasurer appointed by the school trustees of any school district, and no person having been such secretary-treasurer, and no trustee or other person who may have in his possession any books, papers chattels, or moneys, which came into his possession as such secretary treasurer, trustee or otherwise, shall wrongfully withhold, or neglect or refuse to deliver up, or account for, and pay over the same or any part thereof to the person, and in the manner directed by a majority of the school trustees for the school district then in office, or by other competent authority; and such withholding, neglect or refusal to deliver up or account for, shall be punishable, as provided in the three following sections of this Act. R. S. O., c. 225, s. 256; 44 Vic., c. 4, s. 108. Penalty to be inflicted on secretary-treasurer, or trustee for refusing to account.

165.—(1) Upon application to the County Court Judge of the district in which the school district or any part of it is situate, by a majority of the trustees, or any two ratepayers in a school district supported by their affidavit made before some justice of the peace, of such wrongful withholding or refusal, the Judge shall make an order that such secretary-treasurer, or person having been such secretary-treasurer or trustee, or other person do appear before him at a time and place to be appointed in the order. Mode of proceeding.

(2) Any bailiff of a county court, upon being required by the Judge, shall serve the order personally on the person complained against, or leave the same with a grown-up person at his residence. R. S. O., c, 225, s. 256.

Judge to issue order.

166. At the time and place so appointed, the Judge being satisfied that service has been made, shall, in a summary manner, and whether the person complained of does or does not appear, hear the complaint, and if he is of opinion that the complaint is well founded, the Judge shall order the person complained of to deliver up, account for, and pay over the books, papers, chattels, or moneys as aforesaid, by a certain day to be named by the Judge in the order, together with such reasonable costs incurred in making the application as the Judge may tax. R.S.O., c. 225, s. 258.

Effect of non-compliance with Judge's order.

167. In the event of non-compliance with the terms specified in such order, or any or either of them, the Judge shall order the said person to be forthwith arrested by the sheriff of any judicial district in which he may be found, and to be committed to the common gaol thereof, there to remain without bail until the Judge be satisfied that the person has delivered up, accounted for, or paid over, the books, papers, chattels or moneys in question, in the manner directed by the majority of the trustees, or other competent authority as aforesaid; upon proof of his having so done, the Judge shall make an order for his discharge, and he shall be discharged accordingly. R.S.O., c. 225, s. 259.

Other remedy not affected.

168. No such proceeding shall impair or affect any other remedy which the said trustees, or other competent authority, may have against the secretary-treasurer, or person having been such secretary-treasurer or his sureties, or against any trustee or other person as aforesaid. R. S. O., c. 225, s. 260.

Penalty to be inflicted on trustees refusing information, etc., to auditor.

169. The trustees, or their secretary-treasurer in their behalf, shall not refuse to furnish the auditors of any accounts of a rural school district, or either of them, with any papers or information in their power, and which may be required of them relative to their school accounts, and any contravention of this section upon prosecution therefor by either of the auditors, or any ratepayer, shall be punished by fine or imprisonment, as provided by this Act. R.S.O., c. 225, s. 161; 44 Vic., c. 4, s. 110.

Penalty for delaying yearly report.

170. In case the trustees of any school district neglect to prepare and forward the annual report as provided by this Act, by the fifteenth day of January in every year, each of them shall, for every week after such fifteenth day of January, and until such report has been prepared and presented, forfeit the sum of $5, to be sued for by the Inspector, and collected and applied in the manner provided for by this Act. R.S.O., c. 225, s. 263.

Penalty for false school reports and registers.

171.—(1) If any trustee of a public school knowingly signs a false report, or if any teacher of a public school keeps a false school register, or makes a false return, with a view of obtaining a larger sum than the just proportion of school moneys coming to such school, the trustee or teacher shall, for every offence, forfeit to the public school fund of the district the sum of $20, for which any person whatever may prosecute him before a Justice of the Peace.

Application of penalty.

(2) The penalty, when so paid or collected, shall by the justice be paid over to the said public school district. R.S.O., c. 225, s. 264; 44 Vic., c. 4, s. 109; 48 Vic., c. 27, s. 12.

Trustees personally responsible for moneys lost.

172.—(1) The trustees of every school district shall be personally responsible for the amount of any school moneys forfeited by or lost to the school district in consequence of the neglect of duty of the trustees during their continuance in office.

(2) The amount thus forfeited or lost shall be collected and applied in the manner provided for by this Act. R.S.O., c. 225, s. 265. Application of money when recovered.

173. No person suffering from any contagious or infectious disease, or who resides in a house in which any such disease exists, shall be entitled to attend or enter any public school during the existence of any such disease as aforesaid, nor at any time thereafter, until he present to the trustees of the school he wishes to attend, a certificate of a physician that there is no longer danger of contagion or infection from his attendance, to the other pupils of the school; Provided that in rural school districts the trustees may, in the absence of a physician, admit applicants for admission without such certificate, if they are satisfied that there is no danger of contagion or infection from their doing so. And any parent or guardian of any child who knowingly sends such child to any public school in contravention of these provisions, shall be liable, upon conviction before a justice of the peace, upon the complaint of the trustees or of any ratepayer of the school, to a fine not exceeding ten dollars for each offence, or imprisonment in the common jail for a period not exceeding thirty days. 50 Vic., c. 18, s. 13. Persons suffering from contagious diseases, etc., not to attend school. Proviso. Penalty for contravention of this section.

TRUSTEES RESIGNING.

174. Any public school trustee may resign his office, with the consent, expressed in writing, of a majority of his colleagues. Trustees may resign.

EXECUTION AGAINST SCHOOL DISTRICTS.

175. Any writ of execution against any school district, which school district lies wholly within one municipality, may be endorsed with a direction to the sheriff to levy the amount thereof by rate, and the proceedings thereon shall be the following: Writ of execution against trustees—how endorsed.

(1) The sheriff shall deliver a copy of the writ and endorsement to the treasurer of the municipality in which such school district is situate or leave such copy at the office or dwelling house of such officer, with a statement in writing of the sheriff's fees and of the amount required to satisfy such execution, including in such amount the interest calculated to some day as near as is convenient to the day of service. Proceedings thereon; sheriff to leave statement with treasurer

(2) In case the amount, with interest thereon from the day mentioned in the statement, is not paid to the sheriff within one month after the service, the sheriff shall examine the assessment roll of the municipality in which such school district is situate, and shall in like manner as rates are struck for general municipal purposes, strike a rate on the assessable lands in said school district sufficient on the dollar to cover the amount due on the execution, with such addition to the same as the sheriff deems sufficient to cover the interest and his own fees up to the time when such rate will probably be available. In case amount not paid within one month, rate to be struck.

(3) He shall thereupon issue a precept or precepts under his hand and seal of office directed to the said treasurer, and shall by such precept, after reciting the writ and that the said trustees had neglected to satisfy the same, command the said treasurer to levy or cause to be levied such rate at the time and in the manner by law required in respect of the general municipal rates. Precept to be issued to treasurer directing levy to be made.

(4) At the time for levying the annual rates next after the receipt of such precept, the said treasurer shall add a column to the tax roll of the lands in said school district, headed, "Execution rate of A. B. *vs* School District of No. ," (or, as the case may be, adding a column for each execution, if more than one), and shall insert thereon the amount by such precept required to be levied upon each person respectively, and shall levy the amount of such execution rate as afore- At time of levying rate next after precept, execution rate to be levied, and amount returned with

precept to sheriff.

said, and said treasurer, so soon as the amount of such execution or executions is collected, shall return to the sheriff the precept with the amount levied thereon.

Surplus to be returned to treasurer.

(5) The sheriff shall, after satisfying the executions and all fees thereon, return any surplus within ten days after receiving the same to the said treasurer for the general purposes of the said school trustees.

Treasurer to be deemed to be officer of court with respect to such execution.

(6) The treasurer shall for all purposes connected with carrying into effect, or permitting or assisting the sheriff to carry into effect the provisions of this Act with respect to such executions, be deemed to be an officer of the court out of which the writ issued, and as such shall be amenable to the court, and may be proceeded against by attachment, mandamus, or otherwise, in order to compel him to perform the duties hereby imposed upon him.

Clauses 1 to 6 applicable to district lying within more than one municipality.

(7) The above clauses, one to six, both inclusive, shall be applicable to executions against a school district lying within more than one municipality, but in such case the said sheriff shall strike a rate on the assessable lands in said school district from the assessment rolls of the several municipalities in which said school district is situate, and shall deliver to the treasurer of each of the municipalities the precept or precepts aforesaid. 52 Vic., c. 21, s. 2.

GENERAL PROHIBITIONS.

No inspector, trustee, teacher, etc., to act as agent for the sale of books, maps, etc.

176. No teacher, trustee, inspector, or other person, officially connected with the Department of Education, or Model, Public, or High Schools, shall become or act as agent for any person or persons to sell, or in any way to promote the sale for such person or persons, of any school, library, prize or text-book, map, chart, school apparatus, furniture or stationery, or to receive compensation or other remuneration or equivalent for such sale, or for the promotion of sale in any way whatsoever. R.S.O., c. 225, s. 266.

HOW FINES AND PENALTIES MAY BE RECOVERED.

How penalties under this Act shall be recoverable. Warrant of commitment.

177.—(1) Unless it is in this Act otherwise provided, all fines, penalties and forfeitures may be sued for, recovered and enforced, with costs, by and before any police magistrate, or justice of the peace.

(2) If the fine, or penalty and costs, are not forthwith paid, the police magistrate or justice shall, by his warrant, cause the offender to be imprisoned for any time not exceeding thirty days, unless the fine and costs are sooner paid.

Disposition of fines.

(3) On receiving such fine or penalty the police magistrate or justice shall pay the same over to the secretary-treasurer of the school district or other party entitled thereto, except as otherwise provided in this Act.

Summary Convictions Act to apply.

(4) The provisions of the Act of the Parliament of Canada, known as the Summary Convictions Act, shall apply to all such prosecutions so far as the same are applicable. R.S.O., c. 225, s. 267; 44 Vic., c. 4, s. 117.

PROVISIONS AS TO CATHOLIC SCHOOL DISTRICTS.

Catholic school districts covering same territory as Protestant school districts.

178. In cases where, before the coming into force of this Act, Catholic school districts have been established, covering the same territory as any Protestant school district, and such Protestant school district has incurred indebtedness, the Department of Education shall cause an inquiry to be made as to the amount of the indebtedness of such Protestant school district and the amount of its assets. Such of the assets as consist of property shall be valued on the basis of their actual value at the time of the coming into force of this Act. In case the amount of the indebtedness exceeds the amount of the assets, then all the property assessed in the year 1889, to supporters of such Catholic

school districts, shall be exempt from any taxation for the purpose of paying the principal and interest of an amount of the indebtedness of such school district equal to the difference between its indebtedness and assets. Such exemption shall continue only so long as such property is owned by the person to whom the same was assessed as owner in the year 1889.

Catholic school districts to cease to exist.

179. In cases where, before the coming into force of this Act, Catholic school districts have been established as in the next preceding section mentioned, such Catholic school districts shall, upon the coming into force of this Act, cease to exist, and all the assets of such Catholic school districts shall belong to, and all the liabilities thereof be paid by the public school district. In case the liabilities of any such Catholic school district exceed its assets then the difference shall be deducted from the amount to be allowed as an exemption, as provided in the next preceding section. In case the assets of any such Catholic school district exceed its liabilities, the difference shall be added to the amount to be allowed as an exemption, as provided in the next preceding section.

Arrears of taxes levied by Catholic school Boards.

180. All arrears of taxes levied under the authority of any such Catholic school board shall be considered as part of its assets, and shall be handed over to the municipal council to be collected on behalf of the public school board.

Municipal Council to have power to collect.

181. The municipal council shall have all the power provided by the Assessment Act for the collection of such arrears, the same as if they were arrears of municipal taxes.

Repeal clause.

182. Chapter 4 of 44 Victoria, Chapters 8 and 11 of 45 Victoria, Chapter 46 of 46 and 47 Victoria, Chapters 37 and 54 of 47 Victoria, Chapter 27 of 48 Victoria, Chapters 18 and 19 of 50 Victoria, Chapter 31 of 51 Victoria, and Chapters 5 and 21 of 52 Victoria, are hereby repealed.

When Act to come into force

183. This Act shall come into force on the first day of May, A.D. 1890.

SCHEDULE A.

(*Section* 98.)

PUBLIC NOTICE.

Notice is hereby given that a meeting of the ratepayers within the school district of No. will be held at the in the said school district, on the day of A.D. 18 , at the hour of o'clock in the noon, for the purpose of considering the expediency of raising money by way of loan to

(Here state the purposes for which the loan is intended.)

Dated this day of A.D. 18 .

A. B.,
Secretary-Treasurer.

SCHEDULE B.

(*Section* 101.)

Debenture No. of the School District of number

The School District of number promises to pay to the bearer at the at

the sum of dollars of lawful money of Canada in years from the date hereof, and to pay interest thereon during the currency hereof, at the same place, at the rate of per centum per annum, to the bearer of the coupons hereunto annexed respectively, and numbered with the number of this debenture.

Issued at this day of 18 , by and under the authority of the Public Schools Act.

T. R.,
Secretary-Treasurer.

S. M.,
Trustee.

COUPON, No.

The School District of number ; will pay to the bearer hereof, at the at on the day of 18 , the sum of dollars, being interest due on that day on School Debenture No.

T. R.,
Secretary-Treasurer.

I, Armand Henry Corell, Deputy of Elias George Conklin, Esquire, Clerk of the Legislative Assembly, and Custodian of the Statutes of the Province of Manitoba, certify the subjoined to be a true copy of the original enactment passed by the Legislative Assembly of Manitoba, in the third session of the Seventh Legislature, held in the fifty-third year of Her Majesty's reign, and assented to in the Queen's name by His Honour the Lieutenant-Governor on the thirty-first day of March, A.D., 1890.

Given under my hand and the Seal of the Legislative Assembly of Manitoba, at Winnipeg, this first day of April, in the year of Our Lord, one thousand eight hundred and ninety.

A. H. CORELL,
Deputy Clerk of the Legislative Assembly of Manitoba.

CHAPTER 37.

An Act respecting the Department of Education.

[*Assented to 31st March*, 1890.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Manitoba, enacts as follows:—

Department established.

1. There shall be a Department of Education, which shall consist of the Executive Council, or a committee thereof appointed by the Lieutenant-Governor-in-Council. R.S.O., c. 224, s. 1.

2. The Department of Education shall have power: Powers of Department of Education.

(*a*) To appoint inspectors of High and Public Schools, teachers in Provincial Model and Normal Schools, and Directors of Teachers' Institutes; Appointing Inspectors and other officers.

(*b*) To fix the salaries of all inspectors, examiners, Normal and Model school teachers and other officials of the Department; Fixing salaries.

(*c*) To prescribe forms for school registers and reports to the Department; Prescribing forms.

(*d*) To provide for Provincial Model and Normal schools. 44 Vic., c. 4, s. 5; R.S.O., c. 224, s. 4; Providing Model and Normal schools.

(*e*) To arrange for the proper examination and grading of teachers and the granting and cancelling of certificates. Certificates obtained outside the Province may be recognized instead of an examination. Conducting examinations of teachers.

(*f*) To prescribe the length of vacations and the number of teaching days in the year. Prescribing length of vacations, etc.

3. The Department of Education shall nominate one of its members to sign all certificates granted by the Department. One member of Department to sign certificates.

4. There shall be a Board constituted as hereinafter provided, to be known as "The Advisory Board." Advisory Board.

5. Said Board shall consist of seven members. Three members shall constitute a quorum for the transaction of business. Constitution of Board. Quorum.

6. Four of the members of said Advisory Board shall be appointed by the Department of Education for a term of two years. Provided, that on the occasion of the first appintment the term of office of two of such members so appointed shall be one year. Four members to be appointed.

7.—(1) Two of the members of the said Advisory Board shall be elected by the Public and High school teachers actually engaged in teaching in the Province. Public school teachers to elect two members.

(2) The Department of Education shall, from time to time, divide the Province into two districts, so that the said teachers in each district may elect one member of said Board. Province to be divided into two districts for purposes of such election.

8. On or before the first day of June in each year, the Department of Education shall furnish each High and Public School teacher actually engaged in teaching with a blank form of voting paper for the purpose of voting for a member of said Board. Voting papers to be furnished.

9. Such voting papers shall be sent to one of the appointed members of said Board. Voting papers to be sent to appointed member.

10. The appointed members of the said Board shall receive and count the voting papers, and decide any questions relating thereto, and shall report to the Department of Education the names of the persons elected. Appointed members to count votes.

11. Voting papers received after the thirtieth day of June shall not be counted. The person receiving the highest number of votes, in each case, shall be elected. Voting papers must be in by 30th June.

12. The term of office of such members so elected shall be two years, and shall commence on the first day of August next after election. Term of office.

13. The seventh member of said Board shall be appointed by the University Council, by ballot, from time to time, for a term of two years. University Council to appoint one member.

14. Said Advisory Board shall have power: Powers of Advisory Board.

(*a.*) To make regulations for the dimensions, equipment, style, plan, furnishing, decoration and ventilation of school houses, and for the arrangement and requisites of school premises; Equipment and ventilation of school-houses.

Authorized text books.

(*b*) To examine and authorize text books and books of reference, for the use of pupils and school libraries;

Qualification of teachers and inspectors. Admission to High Schools.

(*c*) To determine the qualifications of teachers and inspectors for High and Public Schools;

(*d*) To determine the standard to be obtained by pupils for admission to High Schools;

Decide matters referred.

(*e*) To decide or make suggestions concerning such matters as may, from time to time, be referred to them by the Department of Education;

Appointing examiners.

(*f*) To appoint examiners for the purpose of preparing examination papers for teachers' certificates and for entrance admission of pupils to High Schools, who shall report to the Department of Education;

Forms of religious exercises.

(*g*) To prescribe the forms of religious exercises to be used in schools;

Regulations for Normal, Model, High and Public Schools.

(*h*) To make regulations for the classification, organization, discipline and government of Normal, Model, High and Public Schools. 44 Vic., c. 4., s. 5., R. S. O., c. 224, s. 4.

To determine to whom certificates shall issue, etc.

(*i*) To determine to whom certificates shall issue;

To settle disputes, settlement of which not otherwise provided for.

(*j*) To decide upon all disputes and complaints laid before them, the settlement of which is not otherwise provided for by law.

Annual report to be made by Department of Education.

15. The Department of Education shall report annually to the Lieutenant Governor-in-Council upon the Model, Normal, High and Public Schools, with such statements and suggestions for promoting education generally as may be deemed useful and expedient. R. S. O., c. 224, s. 5.

Regulations and Orders-in Council to be laid before Legislative Assembly.

16.—(1) Every regulation or Order-in-Council made under this Act, or under the Public and High Schools Acts, by the Executive Council, the Department of Education and the Advisory Board, shall be laid before the Legislative Assembly forthwith if the Legislature is in session at the date of such regulation or Order-in-Council, and if the Legislature is not in session such regulation or Order-in-Council shall be laid before the said House within the first seven days of the session next after such regulation or Order-in-Council is made.

Regulation or order disapproved of by Legislative Assembly to be void.

(2) In case the Legislative Assembly at the said session, or if the session does not continue for three weeks after the said regulation or Order-in-Council is laid before the House, then at the ensuing session of the Legislature, disapproves by resolution of such regulation or Order-in-Council, either wholly or of any part thereof the regulation or Order-in-Council, so far as disapproved of, shall have no effect from the time of such resolution being passed. R. S. O., c. 224, s. 7.

Appointing officers, etc.

17. The Department of Education may appoint such officers, clerks and servants as may be necessary for the conduct of the business of the Department and of the Advisory Board.

Boards of Education, etc to cease to hold office after 1st May, 1890.

18. From and after the first day of May, A.D. 1890, the Board of Education and Superintendents of Education appointed under chapter 4 of 44 Victoria and amendments, shall cease to hold office, and within three days after said first day of May, said Boards and Superintendents shall deliver over to the Provincial Secretary all records, books, papers, documents and property of every kind belonging to said Boards.

When Act shall come into force.

19. This Act shall come into force on the first day of May, A.D. 1890.

APPENDIX "C."

No.-26.

VOTES AND PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY OF MANITOBA.

WINNEPEG, Wednesday, 5th March, 1890.
Sitting at 7.30 o'clock, p.m.

The order of the day being read for the House to resume the adjourned debate on the question which was on Tuesday last proposed, That the Bill (No. 12) respecting the Department of Education, be now read a second time, and the question being again proposed the House resumed the said adjourned debate.

* * * * * * *

Then, the main question being put, the House divided and the names being called for they were taken down as follows:

Yeas.

Messieurs Campbell (Souris), Campbell (South Winnipeg), Colcleugh, Crawford, Dickson, Fisher, Graham, Greenway, Harrower, Hettle, Jackson, Jones, Lawrence, McKenzie, McLean, McMillan, Martin (Portage la Prairie), Mickle, Morton, Sifton, Smart, Smith, Thomson (Emerson), Thompson (Norfolk), Winkler, Young—26.

Nays:

Messieurs Gelley, Gillies, Jerome, Marion, Martin (Morris), Norquay, O'Malley, Prendergast, Roblin, Wood—10.

So it was resolved in the affirmative.

Tuesday, 18th March, 1890.
Sitting, 7.30 o'clock, p.m.

The Hon. Mr. Martin moved, seconded by the Hon. Mr. Greenway, and the question being proposed, That the rules of the House be suspended and the Bill (No. 13) respecting public schools be now read a third time, and a debate arising thereupon, and the House having continued to sit till after twelve of the clock on Wednesday morning.

Wednesday, 19th March, 1890.

* * * * * * *

The main question being put, the House divided and the names being called for they were taken down as follows:—

Yeas:

Messieurs Campbell (Souris), Campbell (South Winnipeg), Colcleugh, Crawford, Dickson, Graham, Greenway, Harrower, Hettle, Jackson, Jones, Lawrence, McKenzie, McLean, McMillan, Martin (Portage la Prairie), Mickle, Morton, Sifton, Smart, Smith, Thomson (Emerson), Thomson (Norfolk), Winkler, Young—25.

Nays:

Messieurs Gelley, Gillies, Jerome, Lagimodiere, Marion, Martin (Morris), Norquay, O'Malley, Prendergast, Roblin, Wood—11.

So it was resolved in the affirmative.

APPENDIX "D."

Her Majesty's Roman Catholic subjects in the Province of Manitoba claim certain rights and privileges in relation to education, under section 93 of the Imperial

Act 30 and 31 Vic., cap 3, being the British North America Act, 1867, and under section 22 of the Act of Canada 33 Vic., cap. 3 generally known as 'The Manitoba Act.'

Section 93 of the British North America Act, 1867, reads as follows:—XCIII. 'In and for each Province, the legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

(1). "Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the Union";

(2.) "*All the powers*, &c., &c. (applying only to Upper Canada and Quebec)."

(3.) "*Where in any province a system of separate or dissentient schools exists by law at the Union or is thereafter established by the legislature of the province*, an appeal shall lie to the Governor General in Council, from any Act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education;

(4.) "In case any such Provincial law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor General in Council under this section."

Section 22 of the Manitoba Act, reads as follows:—

22. "In and for the said Province, the said legislature may exclusively make laws in relation to education, subject and according to the following provisions."

(1.) "Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or *practice* in the Province at the Union.

(2.) "An appeal shall lie to the Governor General in Council from any Act or decision *of the Legislature of the Province* or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education;

(3.) "In case any such provincial law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not made, or in any case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section." The words underlined in the above two sections are not in italics in the printed statutes, but are here so underlined to point out the discrepancies between the two said sections.

Preliminary.

It having been repeatedly contended that the above two clauses may be altered by the Legislature of the Province, it is necessary, before studying them upon their merits, to first lay down the proposition:

That section 93 of the British North America Act, 1867, and the section 22 of the Manitoba Act, whether considered in their nature, or as affected by other clauses of the same Acts or by other Acts, cannot be altered or repealed by the Legislature of the Province.

Considered in their nature. Two things are necessary to the existence of a state; certain public bodies, legislative, judicial and coming under the general term "institutions," and giving an organic existence to the state, and a power delegated to those bodies of exercising their proper functions, hence, all the articles or pro-

visions of a written constitution, without exception, may be divided into two classes: The first creating such public bodies or organizations, the second vesting in them certain powers.

The provisions of the first class may, or may not be, subsequently altered by the legislative authority of the state constituted, depending in this upon the intention to be gathered from the constitution as to whether it was meant that the institutions should be permanent or subject to alteration;

On the other hand, and by their very nature, the provisions of the second class, constituting invariably a delegation of powers, cannot in anyway be altered by the state, whose only prerogative is to exercise those powers within the limits and subject to the restrictions of the delegation.

This is not legal controversy, but a conclusion dictated by plain common sense.

It would be superfluous to show that the clauses, quoted above, do not create institutions organic or otherwise, but merely constitute a delegation of powers which may be wide or narrow, but surely cannot be exceeded.

Considered as affected by other clauses of other Acts.

Even if it be not repugnant to the nature of that class of provisions to which the clauses quoted evidently belong, it is submitted that the Legislature of Manitoba could not alter the said clauses.

(*a.*) The words, "*the constitution of the Province,*" used in clause 92 of the British North America Act, 1867, giving to provincial legislatures the power to amend "from time to time * * the *constitution of the Province*" are a clear reference to the words "Provincial Constitution" anteriorly used in the Act as the heading of chapter V. "*Provincial Constitutions*"; so that, in this respect, provincial legislatures are only empowered to amend such provisions as are contained in said chapter V.

(*b.*) Whatever may be of this power under the British North America Act, 1867, the powers of the legislature under the Manitoba Act are even more restricted, section 6 of 34 and 35 Victoria, chapter 28 (Imperial), reading as follows:—

6. "Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last mentioned Act (The Manitoba Act), subject always to the rights of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly and to make laws respecting electors in the said Provinces."

It is therefore submitted as a conclusion, that the education clauses quoted could not be altered or repealed by the Legislature of Manitoba.

It may also be added as a matter of fact, that the Legislature has not altered, nor attempted to alter the said clause.

Having then to deal with the said sections as they are, it remains to examine them upon their merits.

THE MANITOBA ACT.

Section 22.

XXII. "*In and for the Province of Manitoba, the said legislature may exclusively make laws in relation to Education, subject and according to the following provisions:*"

This first paragraph, which is exactly similar to the first paragraph of clause 93 of the British North America Act, 1867, deals with the general power vested in the Legislature of passing educational laws subject to certain restrictions.

Now as to the restrictions:

Sub-clause 1.

(1.) "*Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have by law or practice in the Province at the Union.*"

This sub-clause only differs with sub-clause 1 of section 93 of the British North America Act, 1867, in that the words "or practice" have been added to the former.

Nothing in any such law. These words, preceding the words "*shall prejudicially affect*" certainly convey a much stronger sense than would the words "such laws shall not prejudicially affect." This intention to restrict as much as possible in this respect the powers of the legislature, shall be noticed throughout the whole section.

Shall prejudicially affect, or "*repeal*" nor *deny*, "*abolish*," nor "*violate*," but merely "*affect*." And upon reading the debates on Confederation, wherein it appears with what anxiety and particular care this question of the schools of the minorities was dealt with—a difficulty which in fact was repeatedly on the eve of proving a stumbling block to the federative compact—one may easily realize the imperative motives which withheld from the local Legislatures the power, not to go so far as to openly and grossly violate, but even to "*affect*" rights and privileges in connection with matters which being matters of conscience are of a so delicate and respectable character. (Debats sur la Confederation, pages 18, 146, 383, 437, 851, 884, 885, 1020, and 1021.)

Any right. The Act does not say generally "the rights," which might indicate that those rights should be considered as a whole and as resulting generally from some existing educational systems; the reference to "*any right*" clearly conveys a particular sense covering any particular right.

But the question has been asked: What is a right?

Bouvier's, Wharton's, and other dictionaries may be quoted in order to prove, in the words of a well known authority, that "*where a right exists, a means must exist to vindicate and maintain it*," and that "*want of right and want of remedy are reciprocal.*" Going further it may be argued, as an applicant to the present case, that as prior to the union, there existed in Manitoba no educational law and consequently no legal remedy to enforce and vindicate educational rights, then, such as might be so called educational rights, were in fact no rights at all.

In order to answer this objection a distinction must be made. The sub-clause now under consideration mentions two kinds of rights: (10) rights by law, and (20) by practice.

10. The quotations above referred to are all taken from law dictionaries, and only apply to rights by law. There having been before the union no educational law, it must here be admitted that there then existed no legal means of maintaining such as are here called educational rights, although there was surely at least, under the laws and regulations of Assiniboia concerning public peace and order, a remedy to vindicate and punish a violation of most of those rights.

20. But, which is more important, the statutes also use the words "rights by practice" and to these, the definitions given by dictionaries of law terms, should not apply. It is submitted that where "*practice*" is so recognized by statute, it would be unreasonable to expect that a special sanction should have been provided by law at a time when the statute clearly infers there was no law.

But the question may fairly be put: What is a right held by practice, or right by practice?

The admission is here made that the connection between the words "*right*" and "practice" does not fully satisfy the mind. Although there is nothing repugnant between them, yet those terms, as connected, do not perhaps exactly fit each other.

But what is to be the conclusion? Is it that those words have absolutely no meaning, and must be necessarily taken as non-operative?

It is here submitted that, unless the only conclusion to be arrived at is manifestly absurd, each word of a statute should be credited with some meaning, and supposed to have some effect. If one cannot gather from the law a meaning fully satisfactory to the exigencies of a strictly-trained legal mind, the next best thing should be looked for—and this should be good enough for practical purposes, if it be not repugnant to common sense.

Now, it is not repugnant to common sense to admit the interpretation which naturally suggests itself, *i.e.*, that the Act recognizes as a source or fountain of rights, or elevates to the dignity of rights as we now conceive them, those constant methods of administration and those particular relations and dealings between the members of a community, which went to form a constant usage, or custom, or practice, at a time when, in this respect, there was practically no law in the land.

It *may* be disputed that such rights by practice as the statute contemplates, existed in Manitoba prior to union; but it *cannot be said* generally that "*rights by practice*" mean nothing, when the statute, using such words, evidently recognizes such rights.

On Privilege.—This word implies an immunity or exemption. The same objections may be raised here as to the want of *legal* immunity in connection with privileges by practice, as were raised as to the want of *legal* remedy in connection with rights by practice. The answer given above would here again apply.

With Respect To.—Not "*any right to denominational schools*" which might indicate that this right would be sufficiently protected if the general principles of denominational schools were respected; but "*any right with respect to denominational schools,*" showing that it was intended to shield not only the rights attaching to the essential principles of denominational schools, but even those rights which are more remotely connected therewith, and the suppression of which would not necessarily entail the destruction of the system itself.

To Denominational Schools.—To what extent denominational schools existed in Assiniboia is shown further on. It may, however, be at once pointed out that a school where no denominational teaching is given would not be a denominational school.

Which Any Class of Persons.—These classes are also further on enumerated.

Have By Law.—If this last word has to be taken in the meaning of written law, no special claim is laid thereunder in this memorial. If to be taken as covering usage or custom, it shall be sufficient to consider the word "practice" following which is much wider.

Or Practice.—"Law or practice" are words seldom used in legal phraseology. The usual terms are "written or unwritten law," "law or custom," "law or usage." The departure here made from the usual terms, custom and usage, and the adoption of the rather unusual word practice, would then seem to indicate that this last term should be interpreted in its strict sense in opposition to "custom."

"Custom," of course, is a certain practice, but a practice receiving, upon certain conditions, some recognition by the law. Such are the customs and usages of certain trades in certain parts of England. "*Practice,*" on the contrary, by itself implies no idea of law or of recognition by the law; it merely results from the assemblage of certain usual facts as facts; and in this sense it should be considered.

That the word "practice" was introduced in this sub-clause, not *a majore cautela*, but in order to cover and recognize the well known state of things as existed prior to union in Assiniboia, is shown.

A. By the fact that in all the Acts (except the Manitoba Act) providing after 1867 for the entry of new provinces into Confederation, sub-clause 1 of clause 93 of the British North America Act (wherefrom the word "practice" is omitted) is declared to be applicable to such provinces: whilst in the case of the Manitoba Act, and in this case only, the said sub-clause has been amended by the addition of the word "practice." Why was not this word also made to apply to the British Columbia and Prince Edward Island Acts, both passed after the Manitoba Act?

B. By the fact that all those portions of British North America (except Manitoba) which now form the Dominion, having been provinces before their entry, had regularly organized legislatures having the power to legislate in as full measure, whilst Manitoba, not being a province before its union, could pass no law in the same sense as the other provinces, and, in fact, only passed such laws as amounted to mere regulations of police, general protection and public order. When the circumstances of Manitoba, before its union, were so different from those of the other provinces before their union, how could the same enactment have been used? And

when a different enactment is made, fitting exactly (as the word "practice") such particular circumstances, how can it be said that such enactment should not be taken in the precise and strict sense, making it so specially applicable?

C. By the New Brunswick schools case.

Although the legal struggle in connection with this case only commenced in 1872, the objectionable features of the question were well known at the time of the passing of the Manitoba Act. The Common Schools Act which was passed in 1871, and gave rise to the troubles, was a first time introduced in the New Brunswick Legislature in 1869 and again in 1870, and defeated on both occasions. (Journals New Brunswick Legislature, April, 1869, and February, 1870.)

As far back as 1869 the question created very considerable agitation. (Sessional papers of Canada, Vol. x, No. 9, 1877, page 360, par. 3, and page 363, par. 1.)

Now, upon what did the whole question hinge?

The Sessional Papers, quoted fully, answer this question:—

"The Act complained of (the Common Schools Act, 1871) is an Act relating to common schools, and the Acts repealed by it apply to parish, grammar, superior and common schools." No reference is made in them to separate, dissentient or denominational schools, and the undersigned does not, on examination, find that "*any statute* of the province exists establishing such special schools." (Report of Minister of Justice, page 36 L.)

"In order to render any law of a provincial legislature inoperative under the 1st sub-section of Section 93, it is requisite that there should in such province have been at the union, denominational schools with respect to which a certain class of persons had rights or privileges, and that those rights or privileges should have been secured *by law.*

"This would seem to lead at once to the consideration of the laws in force in New Brunswick at the union, for the purpose of determining whether the Roman Catholics had by such laws any rights or privileges with respect to denominational schools." (Memo. of Executive Council of N.B., page 377.)

"Inasmuch, then, as in New Brunswick at the union, and at the time of the passing of the Common Schools Act, 1871, the Roman Catholics had *by law* no rights or privileges with respect to denominational schools, nothing in the Common Schools Act can have deprived them of rights or privileges which they did not previously enjoy.

"It is stated that under the school law in force at the union and up to the passing of the Common Schools Act, 1871, the Catholics were enabled, whenever their numbers were sufficiently large, to establish schools in which a good religious and secular education was afforded.

"No such right existed *under the law;* nothing in the Parish Schools Act of 1858 prevented the establishment of private schools *outside of the law,* as nothing in the Common Schools Act, 1871, prevents the establishment of similar schools. An irregular and defective administration of the law might tolerate illegal practices, and allow parties to derive unwarrantable advantages *in violation of the law;* but privileges enjoyed in violation of the law cannot give rights *under the law.*" (*Idem,* page 385.)

"We have now to determine whether any class of persons had, *by law* in this province, any right or privilege with respect to denominational schools at the union which are prejudicially affected by the Common Schools Act, 1871. This renders it necessary that we should with accuracy and precision ascertain exactly what the state of the law was with reference to denominational schools * * * " (Judgment of Supreme Court of New Brunswick, page 411.)

"The Parish Schools Act, 1858, clearly contemplated the establishment throughout the province of public common schools for the benefit of the inhabitants of the province generally; and it cannot, we think, be disputed that the governing bodies under the Act were not in any one respect or particular denominational." (*Idem,* page 411.)

"The schools established under this Act (1858) were then public, parish or district schools, not belonging to or under the control of any particular denomination, neither had any class of persons nor any one denomination, whether Protestant or Catholic, any rights or privileges in the government or control of the schools, that did not belong to every other class or denomination, in fact to every other inhabitant of the parish or district; neither had any one class of persons or denomination, nor any individual, any right or privilege to have any peculiar religious doctrines or tenets exclusively taught, or taught at all in any such school. What is there, then, in this Act to make a school established under it a denominational school, or to give it a denominational character?" (*Idem*, page 412.)

"The simple question for solution is: does the Common Schools Act, 1871, prejudicially affect any right or privilege with respect to denominational schools, which any class of persons had by law in the Province at the Union." (*Idem*, page 422.)

"There were several denominational schools in existence at the Union, such as the Varley School, in St. John, the Sackville Academy, the Madras School, and the like; but they are not touched by the Common Schools Act, 1871, they remain in the enjoyment of all the rights they had at the Union." (*Idem*, page 423.)

The New Brunswick case may then be summed up as follows:

1. There existed by law in New Brunswick, prior to the Union, certain denominational academies; but the Common Schools Act, 1871, applying only to common schools did not affect such academies.

2. Although such existed *by practice*, no denominational common schools existed *by law* in New Brunswick prior to the Union nor at any other time, so that the Common Schools Act, 1871, in providing that "all schools shall be non-sectarian," only repeated in this (far from violating it) what had always been and was yet the law.

In one word the claims of the Roman Catholics of New Brunswick fell short from the fact that the British North America Act does not recognize "practice prior to Union" as a source of rights and privileges.

But this word "practice" has been inserted in the corresponding clause of the Manitoba Act, and it is submitted that it was so inserted clearly in order to obviate difficulties similar to that of the New Brunswick case.

This comment of the word "practice" closes the considerations on the first sub-section.

SUB-SECTION 2.

The first discrepency between this sub-section and the British North America Act, 1867, lies in the suppression in the former of the three first lines to be found in the latter.

The first three lines read as follows:—

3. "Where in any province a system of separate or dissentient schools exists by law at the Union or is thereafter established by the Legislature of the Province,"—

The British North America Act, having to provide in a general clause for the different circumstances of the Provinces which were then entering and might later on enter Confederation, very properly used the alternate proposition "where—or where—,"

But in the Manitoba Act, providing for the immediate entry of one Province, the past circumstances of which were either one way or the other, it is clear that the same form of an alternative proposition could not logically be used.

But the question then arises: Does the absence of some other form of alternative proposition in sub-clause 2 of the Manitoba Act debar the citizens thereof from appealing to His Excellency in Council, on the one hand upon grounds of rights existing by law before the Union, and on the other hand upon grounds of rights resulting from legislative Acts passed thereafter?

The answer here submitted is in the negative.

The Manitoba Act provides for an appeal from "*any Act* or decision affecting *any* right or privilege" in the widest possible terms.

Again by the British North America Act *all* the Provinces (whether originally or subsequently incorporated to Confederation) enjoy this most essential right of an appeal from any Act or decision affecting any right or privilege in connection with separate or dissentient schools established by the legislature after the Union.

Manitoba would be the only Province debarred in this respect from this essential right of appeal. As an example: In the event of the local executive having arbitrarily administered and violated, say a year ago, the (denominational) Schools Act of 1881, the Roman Catholic minority of Manitoba would have been the only minority in Confederation debarred from an appeal under such circumstances.

This is repugnant, and more so as the Manitoba Act was passed to extend and continue (and not to curtail in any sense, especially not in its general provisions) the British North America Act, 1867.

But more, sub-clause 2 of the Manitoba Act is more definite, much clearer and perhaps stronger than the corresponding sub-clause of the British North America Act.

When the Roman Catholics of New Brunswick, under sub-clause 3 of the British North America Act, appealed to the Governor General in Council from the Common Schools Act, 1871, it was contended by the Executive Council of that Province (same Sessional Papers, page 387) that the words from any act or decision of any provincial authority rather pointed to matters of administration, as for instance, to the acts or decisions of the Executive authority.

This point has never been settled, so that in this respect the British North America Act is yet somewhat under a cloud.

But in the case of Manitoba care has been taken to dispel such ambiguity, and certain words have been added to sub-clause 2 of the Manitoba Act, which reads: "From any Act or decision *of the Legislature of the Province*, or of any provincial authority."

It is most remarkable indeed that, according to the reports of the case, but two slight additions to clause 93 of the British North America Act (being "practice" in paragraph 1, and *of the Legislature of the Province*, in sub-clause 3) should have been needed to make the pretensions of the Roman Catholics of New Brunswick admittedly unassailable on all grounds, and that the addition of these very words in the Manitoba Act are the *only* discrepancies between this Act and the British North America Act.

SUB-SECTION 3.

Nothing shall be said of this sub-section, only that it seems to have been intended as a sub-division of sub-clause 2.

Before closing these considerations upon this part of the law, it may be well, in order to show in what spirit the same was enacted by the Imperial Parliament, to quote the words pronounced by the Earl of Carnarvon in the House of Lords (19th February, 1867), when the educational clause of the British North America Bill was under discussion.

His Lordship says:—

"Lastly, in the 93rd clause which contains the exceptional provisions to which I referred, your lordships will observe some rather complicated arrangements in reference to education. I need hardly say that that great question gave rise to nearly as much earnestness and division of opinion, on that, as on this side of the Atlantic. This clause has been framed after long and anxious controversy, in which all parties have been represented, and on conditions to which all have given their consent.

"It is an understanding, which as it only concerns the local interests affected, is not one that Parliament would be willing to disturb, even if in the opinion of Parliament it were susceptible of amendment, but I am bound to add, as the expression of my opinion, that the terms of the agreement appear to me to be equitable and judicious. For the object of the clause is to secure to the religious minority of one Province the same rights, privileges and protection which a religious minority of another Province may enjoy. The Roman Catholic minority of Upper Canada,

the Protestant minority of Lower Canada, and the Roman Catholic minority of the Maritime Provinces, will thus stand on a footing of entire equality. But, in the event of any wrong at the hand of the local majority, the minority have a right to appeal to the Governor General in Council, and may claim the application of any remedial laws that may be necessary from the Central Parliament of the Confederation."

Having then endeavoured to show that any act violating such rights as may have been consecrated by practice prior to the Union, would be null; and that any act violating such rights and privileges as may have been established or recognized by laws after the Union, would be subject to an appeal to the Governor General in Council, it is now proper to ascertain, 1st. What was the practice followed *prior* to Union? 2nd. What acts have been passed *after* Union, and what rights and privileges may have resulted from such practice and such acts?

PRACTICE PRIOR TO UNION AND RIGHTS AND PRIVILEGES THEREUNDER.

The correspondence of Monseigneur Plessis, Bishop of Quebec, that of Earl Selkirk, of Monseigneur Provencher and of Monseigneur Taché, Bishops of St. Boniface, will illustrate the condition of education in the Red River settlement long before the Union.

As far back as 1819, Mr. (since Bishop) Provencher opened at St. Boniface a school where catechism and reading were taught, and the following year, Latin elements were added to the curriculum.

On the 2nd day of July, 1825, the chief factors of the Hudson Bay Company, assembled in Council at York Factory, passed the following resolution:—

Great benefit being experienced from the benevolent and "indefatigable exertions of the Catholic Mission at Red River, in promoting the welfare and *moral and religious instruction of its numerous followers;* and it being observed, with much satisfaction, that the influence of the Mission under the direction of the Right Reverend Bishop of Juliopolis, has been uniformly directed to the best interest of the settlement and of the country at large, it is resolved: That, in order to mark our approbation of such laudable and disinterested conduct on the part of said mission, it be recommended to the Hon. Committee, that a sum of fifty pounds per annum be given towards its support, &c., &c."

In 1829, a school for girls was established at Saint Boniface.

In 1838, an industrial school conducted by experts from Quebec, and where sewing, knitting and weaving specially were taught, was also established at Saint Boniface.

The arrival of the sisters of Charity in 1844 marks the beginning of more improved schools for girls in the Colony.

The actual College of Saint Boniface and Ladies' Academy, were also founded long before the Union. But it is better to invoke upon this matter the authority of public documents, and the following quotations were taken from a Narrative of the Canadian Red River Expedition of 1857 and the Assiniboine and Saskatchewan Exploring Expedition of 1858, by Henry Youle Hind, M.A., F.R.G.S., Professor of Chemistry and Geology in the University of Trinity College, Toronto. (London, Longman, Green, Longman, and Brothers, 1860.)

The expedition was organized and despatched by the Canadian Government, and the report was of course made officially.

Under the title "The Missions at Red River" chapter 9 of the "Narrative" begins thus;—

"There are three denominations in Assiniboia; Church of England, Presbyterian, and Roman Catholic."

Further (page 194) it says:—

"In 1856, the census, according to religion, stood thus:

Roman Catholic, 534 families, 3 churches.

Episcopalian, 488 families, 4 churches.

Presbyterian, 60 families and 2 churches.

It will be found important later on, to quote the following from pages 208 & 209:—

"There is a distinct and well preserved difference in faith between the populations of the different Parishes into which the settlement is divided. Some are almost exclusively Protestant, others equally Roman Catholic. In the Parish of St. Norbert there is not one Protestant family, but 101 Roman Catholic families. In the Parish of Saint Boniface there are 178 Roman Catholic families and five Protestant; so also in the Parish of Saint Francois Xavier on the Assiniboine, there are 175 Roman Catholic to three Protestant families. On the other hand, in the Parish of St. Peter, there are 116 Protestant to two Roman Catholic families; and in the Parishes of Upper and Lower Saint Andrews there are 206 Protestant to eight Roman Catholic families."

Under the heading "Education in the settlement" and sub-heading "Condition of Education at Red River," chapter 10 begins thus:—

"Education is in a far more advanced state in the Colony than its isolation and brief career might claim for it under the peculiar circumstances in which the country has been so long placed."

"There are seventeen schools in the settlement, generally under the supervision of the ministers of the denomination to which they belong."

Further on, page 215:—

"The Roman Catholic schools are three in number, one of them occupying a very spacious and imposing building near the church of Saint Boniface, and providing ample accommodation for female boarders.

"All of the foregoing establishments are independent of the sunday schools, properly so called, in connection with the different churches."

Speaking of the Church of England Schools, and quoting from a letter from His Lordship the Bishop of Rupert's Land, the report adds (pages 216, 218 and 219):—

"Within these boundaries the schools connected with the church of England are thirteen. The thirteen are exclusive of the two higher academies for young ladies and for boys. In the collegiate school, many of the pupils make very good progress. The sources of income vary much; ten out of the thirteen schools are connected with the Church Missionary Society. The model training master is entirely paid by them, and also the masters of the pure Indian schools. In the other schools, about one-half may be paid by the Society, sometimes less, and *the rest made up by the* parents of the children."

"The sum paid by the parents is 15s. a year: where latin is taught, one pound. In some parishes they prefer to pay the pound, or 30s. a family, and to send as many as they choose for that sum."

"The parochial school connected with my own church is equal to most parochial schools which I have known in England."

Speaking later of Presbyterian schools, the narrative quotes a letter from Rev. John Black, a Presbyterian Minister at Red River, from which the following passages (pages 219 and 220) are extracted:—

"First, then, as to the school: this is entirely supported by the people of the district, or rather *by those of them who send their children to it.*"

"You are aware that *we have no public school system in the colony, and this, like the rest, is therefore essentially a denominational school.*"

On the subject of Catholic schools, the report similarly quotes a letter from His Grace the Bishop of Saint Boniface, parts of which (220 and 221) read as follows:—

"The parishes on the banks of Red River and the Assiniboine are four in number; Saint Boniface, Saint Norbert, Saint-François-Xavier and Saint Charles. Fifty-eight children receive education in the school of the Brothers of the Christian Doctrine, in the parish of Saint-Boniface. In the convent belonging to the Sisters of Charity, commonly known in Canada as the Grey Nuns, twenty young ladies are boarded, and receive an excellent education, suitable to their station in life. Besides the boarders, the Sisters maintain and educate fifteen poor orphan girls, and keep a

day school for the benefit of the poorer portion of the parishioners. In the parish of Saint-Norbert, thirty-one boys and twenty-nine girls attend the schools kept by a priest and the Sisters of Charity. In the parish of Saint-François-Xavier, thirteen boys and twenty-six girls receive instruction from the Sisters of Charity. In the parish of Saint Charles there is no school or chapel."

"The truth is that, but for the unselfish zeal of some who devote themselves without fee or earthly reward to this arduous and meritorious task, it would be absolutely impossible to keep up the schools. So far scarcely one child in ten has paid for his schooling, although *the charge does not exceed ten shillings per annum.*"

It is then submitted, as a matter of fact, that in Assiniboia, prior to union:—

1st. There were schools.

2nd. The schools (exclusive of Sunday schools) were either elementary or collegiate, the former being by far the more numerous.

3rd. All the schools were denominational, being Church of England, Presbyterian, or Roman Catholic.

4th. They were denominational in the sense that they were the property of their respective denominations, maintained for their respective benefit and with their respective resources, managed by their respective representatives, and attended respectively by their children.

5th. All the schools were denominational in this other and essential sense that they imparted the particular religious teachings of their respective denominations, without which they would not have been denominational.

6th. The schools were (page 214) "generally under the supervision of the ministers of the denomination to which they belonged," and this was invariably so for Roman Catholic schools.

7th. The children of the one denomination, and more strictly so for Roman Catholics, attended only the schools of their respective denomination, and in fact, by the grouping of the different elements of the population (page 203), it could hardly be otherwise.

8th. The people contributed to the schools of their respective denominations and to those only.

It would of course be unreasonable to claim to-day under the statute, a system of schools which would be, in its most minute details, an absolute reproduction or copy of the system existing by practice prior to Union.

But in this system as sketched above, is found the application of certain principles constantly held as essential by Roman Catholics, and inseparable from what may be fairly termed a system of denominational schools.

Leaving, then, the lesser features aside, the Roman Catholic subjects of Her Majesty in Manitoba, claim to-day as resulting from the practice followed prior to Union, the following essential rights and privileges with respect to education:—

1st. The right to establish through their due representatives as Catholics (whether an appointed or elected Catholic board or Catholic committee or otherwise) —or that, the state do so establish, wherever needed for the educational advancement of the Roman Catholic population and subject to certain reasonable requirements as to the number of the Roman Catholic population of school age, Christian Schools; *i.e.*, schools where, alongside with secular branches, the principles of christian morals and religious truths are fully taught.

2nd. The right to determine through their representatives as aforesaid, or that the state do determine, subject to their approval, the particular character of such principles of morals and religious truths to be taught in such schools, and that the same apply to the selection of books and authors on those matters which, although secular, may have, (as history) some influence on the religious training of the pupil.

3rd. The right that the moral and religious training aforesaid, as well as the particular secular branches above referred to, be taught by professors fully competent in the spirit and sense of the preceding paragraph; and, in order to attain that end, that such teachers be certificated by the Roman Catholic representatives as

aforesaid, or by the State, upon an examination to be determined by the Roman Catholics through their representatives as aforesaid, as far at least as the matters above mentioned are concerned.

Provided always that such right be not incompatible with certain regulations of a general, fair and undenominational character which the State may make to enhance the general efficiency of, and determine a general standard for all the schools of the Province.

4th. The privilege of being free, under all circumstances from compulsory attendance at schools other than such as are established, regulated and managed as aforesaid.

5th. The privilege of being free under all circumstances from any compulsory contribution to any other school than as aforesaid.

THE LAW AFTER THE UNION AND RIGHTS AND PRIVILEGES CLAIMED THEREUNDER.

Leaving aside the two educational Acts passed at the last Session (February and March, 1890) and here complained of, the Acts passed by the Legislature of Manitoba respecting education are—34 Vic., cap. 12 (1871); 42 Vic., cap. 11 (1879); cap. 62 of Con. Stat. (1880); and 44 Vic., cap. 4 (1881).

Although, besides these, some twenty amending Acts have been passed in the course of twenty years, yet, it may strictly be said that the same principles have constantly been recognized and consecrated ever since 1871, and that in no instance has an attempt been made in the legislature to curtail the rights enjoyed by the Roman Catholic population of Manitoba.

Taking then, the Manitoba Schools Act of 1881 (44 Vic., cap. 4) which was in force at the time of the passing of the two Acts here complained of, the general principles of the system existing by law since 1871 up to March, 1890, may be enumerated as follows:—

1st. A Board of Education composed of Protestants as Protestants and of Catholics as Catholics (Sec. 1).

2nd. The two sections of the said Board, one to be Protestant, composed of the Protestant members, and one Catholic composed of the Catholic members (Sec. 5).

3rd. Each section having power: (*a*) to control and administer its own schools and to pass by-laws for the administration and general discipline thereof, and for the carrying out of the provisions of the law; (*c*) to choose all books, maps and globes to be used in its schools, provided that all books concerning religion and morals be first approved of by the competent religious authority; (*e*) to pass by-laws respecting the formation and alteration of school districts under its control. (Sec. 5.)

4th. One Protestant member of the Board appointed as Superintendent of the Protestant section, and one Catholic member of the Board appointed as Superintendent of the Catholic section (section 9), each Superintendent being the chief executive officer of his section, and being entrusted with the general supervision of the schools of such section. (Sub-section B.)

5th. School districts to be formed according to by-laws passed by the said sections (Section 5 amended by 47 Vic., cap. 37, Sec. 1).

6th. School Trustees to be bodies corporate under the name "The School Trustees for the Protestant School District of ," or "The School Trustees for the Roman Catholic School District of ." (Sec. 34 amended by 43 Vic., cap. 37. sec. 53.)

7th. None but Protestants to be elected as Trustees for and qualified to vote in Protestant School Districts, and none but Catholics to be elected as Trustees for, and qualified to vote in Catholic School Districts. (Sec. 30 amended by 47 Vic., cap. 37. secs. 5 and 7, sec. 30; sec. 53.)

8th. Teachers in the schools of one section to be first recognized or certificated by such section. (Sec. 5; sub-sec. B.)

9th. Inspectors appointed by each section for its particular schools. (Sec. 5; sub-sec. D.)

10th. No Protestants compelled to pay for Catholic schools, and no Catholics compelled to pay for Protestant schools. (Sec. 30.)

11th. By-laws passed by School Trustees concerning compulsory attendance to be first approved of by the proper section. (Sec. 101.)

12th. The Legislative school grant annually divided between the two sections upon the basis of their respective population of school age. (Sec. 34.)

Her Majesty's Roman Catholic subjects in Manitoba claim under the laws passed after the Union, as above summarized, the same rights and privileges in relation to education as have been claimed and specified in the preceding division under practice prior to Union, adding thereto the following:—

(*a.*) The right not only that they shall not be interfered with by the law in the sense that the law does not interfere with private enterprise not contrary to public order, but also to have a status before the law, or to hold under the law the essential powers for the carrying out of the principles aforesaid, whether such powers be vested in a Catholic section of education and Boards of Catholic Trustees as up to the present, or in other bodies equally representative.

(*b.*) The right for such Catholic School Districts as existed at the passing of the two Acts here complained of, to continue in their legal existence hereafter, with such powers as they possessed and subject to such regulation of the Catholic section as existed at the time of the passing of the two said Acts here complained of.

THE TWO ACTS COMPLAINED OF VIOLATE THE RIGHTS HEREINBEFORE SPECIFIED.

It may be first remarked that the Public Schools Act complained of does not merely repeal all Acts or parts of Acts contrary to its dispositions (which might possibly be interpreted as yet allowing some parts of the denominational system to continue in existence); but that clause 132 thereof repeals *in toto* and specifically all the then existing Educational Acts.

The Roman Catholic minority is then deprived of all such rights and privileges as they possessed under "The Manitoba Schools Act, 1881," unless such rights and privileges are re-enacted in "The Public Schools Act" complained of.

Every Section of the Manitoba School Act points out clearly that the system thereunder was strictly denominational even in its most minute details. This Act, and the system at the same time, has been abrogated. Now is there one single clause in the Public Schools Act re-establishing such system either wholly, or at least in some of its essential principles? Surely not.

The Roman Catholic minority, represented by the Catholic section of the Board of Education and by their Boards of Catholic trustees, had under the Manitoba Schools Act, a status recognized by law; and they held from this law and could exercise under the sanction of the law, the powers necessary to the carrying out of their schools. The Manitoba Schools Act giving them such powers, is repealed. Now, what clause of the common Schools Act replaces them in such status, and re-vests in them such powers?

Roman Catholics where sufficiently numerous, had under the Manitoba Schools Act the right to organize themselves in Roman Catholic school districts, and to erect and enjoy therein a denominational Roman Catholic school; and they held from the law, through their trustees the necessary powers for the management of such schools; power to sue and be sued, to assess and collect under the sanction of the law, not only as citizens but as a public body.

Now, under the Common School Act, can Roman Catholics hereafter establish denominational schools recognized by law? How can a Catholic Board or any other Catholic educational body be established and enjoy the usual rights of corporate bodies? How can they assess and collect under the authority and protection of the law?

It may perhaps be said, "Roman Catholics had formerly the right to establish and manage Roman Catholic schools, and they have the right now if they wish to exercise it as a matter of individual and private enterprise." As well repeal a private Act incorporating (say) a milling company, and say to the shareholders thereof; "You have yet the right to carry on milling operations as a matter of

private and individual enterprise; you consequently enjoy the same rights as before." It is clear that in both cases, a recognition by the law and the enjoyment of corporate powers are in themselves most essential and precious rights and privileges.

Here the Public School Act violates, not only the educational rights of Roman Catholics, but also their most elementary rights of property.

Sections 179 and 180 of the Public School Act provide that where, before the passing of the Act, a Roman Catholic school district was established covering the same territory as any Protestant school district, then, upon the coming into force of the Act, all the assets of the Roman Catholic school district shall belong to, and the liabilities thereof be paid by, the public school district.

Thus in the city of Winnipeg, which is covered as well by a Protestant as by a Catholic school district, the arrears of taxes, buildings and equipments of the Catholic trustees—who have no debt—shall, upon the coming into force of the Act, become the property of the public school district.

Further, as the words "covering the same territory" above used, may be interpreted as applying not only to the case where a Protestant and a Roman Catholic district are comprised within the same limits, but also to the case where one district covers part of another, (which would apply to the much greater number of Roman Catholic school districts) then, if such interpretation be good, the property of the majority of the now existing Catholic districts shall, upon the coming into force of the Act, become the property of the public school district.

The Roman Catholics having always had the property of their schools, this is evidently a violation of their rights under practice prior to Union, as well as of their rights under the law passed after the Union.

The general rule is, that when an act is repealed, all things lawfully done thereunder remain good and binding, and all bodies lawfully constituted thereunder continue in existence. Thus, the town of St. Boniface, incorporated by letters patent under "The Towns Corporation Act," continues in existence, although such Act has been repealed.

Can it be said that, although the Manitoba Schools Act is repealed, the Roman Catholic School Districts existing thereunder are yet allowed by the Public School Act to continue in existence? It is submitted not.

1. *Certain Roman Catholic school districts are wiped out.* Section 178 and 179 of the Public Schools Act provide: That where, before the passing of the Act, Roman Catholic school districts have been established, covering the same territory as any Protestant school district, then, upon the coming into force of the Act, such Catholic school district shall cease to exist.

The city of Winnipeg being for one, in that case, as aforesaid, it is evident that this clause means the abolition at least of the Roman Catholic schools of that city.

2. The greater number of Roman Catholic school districts are wiped out. As the words "covering the same territory" used in the third line before last of the preceding paragraphs, may be interpreted as applying, not only to the case where a Protestant and a Roman Catholic district are comprised within the same limits, but also to the case where one district covers part of another (which applies to the greater of Roman Catholic school districts in the Province), then, if such interpretation be good, the greater number of Roman Catholic school districts are abolished by the Public Schools Act.

3. All the Roman Catholic school districts of the Province are virtually abolished.

Section 3 of the Public Schools Act provides that; All Protestant and Catholic School Districts existing when the Act comes into force shall be subject to the provisions of the Act.

It cannot be said that the words "subject to provisions of the Act" here mean "Subject to such provisions as are specially liable to such districts." As there are no such provisions in the Act made specially applicable to Protestant and Roman Catholic districts, not even for the purpose of wiping them out, then all such districts would remain in existence; and there being now in Manitoba but two classes of

school districts; the Protestant and the Roman Catholic, covering pretty well the whole of the Province, then the Act would be inoperative, as applying to nothing, unless it be contended that it intends to establish Public School districts without disturbing either Protestant or Catholic districts, which is absurd from the reading of the Act.

The words "Subject to the provisions of this Act" then mean "Subject to the general provisions of the Act."

One of these provisions being (Sec. 3) that all Public Schools shall be non-sectarian, it is evident that all Protestant and Roman Catholic Schools are abolished, and turned into Public non-sectarian schools.

To abolish all Roman Catholic Schools and turn them into non-sectarian schools is surely to deprive them of rights and privileges which they enjoyed with respect to denominational schools by practice at the Union, as well as of those rights relating to separate schools recognized by the laws passed after the Union.

The effect of the clauses above referred to is to deprive the Roman Catholic minority of the rights they enjoyed both before and after the Union. But sections 89 and following of the Public Schools Act go further; they imply a compulsion, and directly violate the privileges of Her Majesty's Roman Catholic subjects enjoyed both before and after the Union.

Before Union, the practice was that Roman Catholics supported Roman Catholic schools and these only, and the same principle is confirmed by clause 30 of the Manitoba School Act which provides that: "In no case shall a Protestant ratepayer be compelled to pay for a Catholic school, nor a Catholic ratepayer for a Protestant school."

Now, clause 89 and following, of the Public Schools Act, provide for compulsory assessment of all the property in the public school district; and Section 93 provides that: "The taxable property in a municipality for school purposes, shall include all property liable to municipal taxation."

It may be further remarked that as religious exercises in public schools (Section 6), teachers (Section 127), teachers' certificate (Section 31), inspectors (135) and in fact the whole working of the Public Schools Act, is subject to the control and management of a Department of Education and an Advisory Board the creation of which is not provided for in the said Public Schools Act, the provisions relating to such matters may be more or less objectionable, according to the nature and composition of such Department of Education and Advisory Board. Considering the Public Schools Act by itself, the provisions above referred to are found objectionable by Catholics at least as being a departure from their rights to manage their schools through persons representing their religious convictions, and as offering no guarantee that their conscientious scruples in the teaching of their children shall be respected.

If clause 18 had been omitted therefrom, it could hardly be said that the "Act respecting the Department of Education" is *ultra vires* as violating the educational rights and privileges of Roman Catholics.

The Legislature evidently has the right to establish in the province a system of public schools, provided the same does not interfere with Roman Catholic schools.

In view of the establishing later on such a system of public schools, the Legislature has evidently the further right to create a Department of Education and Advisory Board or such other body as may be thought proper, for the administration and management of such public schools.

Leaving aside clause 18, the Act does not seem to go further, and the fact of providing for the management of Provincial, Model, Normal, and Public Schools does not at all imply the abolishment of Protestant and Roman Catholic Schools.

But section 18 provides for the extinction of the Board of Education (and consequently of the Catholic section) and substitutes nothing in lieu thereof for the working of Roman Catholic Schools—Roman Catholics are hereby deprived of that organization which they had under the Manitoba Schools Act, deprived of all educational organization, and in fact left in the impossibility of carrying out any system of schools as a system.

More, all the property of the Board (and consequently that of the Catholic section) is ordered to be delivered up to the Provincial Secretary.

It is submitted that the Catholic section cannot be so deprived of its property.

If it is represented that the Roman Catholics are not left without educational organization by the abolition of the Catholic section inasmuch as the effect of said clause 18 is to substitute the Department of Education "and the Advisory Board" in lieu of the said Catholic section, then it is submitted that the said Department and Board in the composition of which it is not provided that a single Roman Catholic shall enter, cannot be acceptable to Roman Catholics, and that their establishment for the conduct and management of all the schools of the Province is a violation of the right possessed by Roman Catholics both before and after Union to manage and administer their own schools through persons or bodies representing their religious convictions.

The Act respecting the Department of Education is also complained of, upon the same grounds as above, inasmuch as it may affect the Roman Catholic Normal Schools of the Province.

NOTE.—For copy of the Manitoba Public Schools Act, 1890, being 53 Vic., cap. 38, intituled "An Act respecting Public Schools," assented to 31st March, 1890, see *ante* page 14.

No. 6.

(*Translation.*)

BISHOP'S RESIDENCE, THREE RIVERS, 12th May, 1890.

Hon. J. A. CHAPLEAU, Secretary of State, Ottawa.

SIR,—The unjust law which the Manitoba Government have caused to be adopted against the Catholic and French-speaking population of that province, abolishing separate schools and the official use of the French language, went into force on the 1st May instant. The protests of the minority, so unworthily treated by this infamous law, have been laid before the Dominion Government in order to secure its disallowance and the protection guaranteed them under the constitution. I trust the Government, of which you are a leading member, will lend a favourable ear to this appeal to its authority, and protect the rights of that minority by disallowing this Act, which has been characterized as persecution by Protestants themselves. The manliness with which you repelled a similar attempt in the North-West Territories inspires me with confidence that you will not fail to take a firm stand in this case also. The federal compact was invoked to maintain the abolition of separate schools in New Brunswick a few years ago, and nevertheless, the Catholic ministers, who were then members of the Dominion Government, declared to the Bishops that they were prepared to resign on that question, and it was only through respect for the autonomy of the provinces that that iniquitous law was then tolerated.

To-day it is in the name of the federal compact that the Manitoba minority ask for protection against an unjust law, which is a violation of the federal compact, for that compact guarantees the official use of the French language on the same footing as the English language, and the maintenance of separate schools, conditions without which the Catholic and French-speaking people of Manitoba would never have consented to enter into confederation; now that is the guarantee which the Hon. F. Martin's Act has recently trampled under foot, while unjustly, and without a shadow of pretext, depriving that minority of a right which every people holds most sacred, the right of preserving the language and the faith of their fathers.

I am confident, therefore, that the Ministers charged with the care of our religious and national interests in the Dominion Government, will to-day exhibit the same firmness as their predecessors, and that they will succeed in convincing their colleagues that if they desire to maintain a good understanding between the divers races, and insure peace and stability of Confederation, they must do justice to the

minority in Manitoba, and protect them against the iniquitous persecution inflicted upon them by the majority at the instigation of a few fanatics.

In my humble opinion this is a far more serious matter than the Riel question, inasmuch as it involves a direct violation of sentiments dearest to the heart of man, his love for his native tongue and his religion.

Trusting that no Catholic French-Canadian member of the Government will, in the face of the country, take the responsibility of supporting a law so evidently unjust and hostile to our nationality,

I remain, &c.,
L. F., Bishop of Three Rivers.

No. 7.

To the Right Honourable Sir FREDERICK ARTHUR STANLEY, Baron Stanley of Preston, in the County of Lancaster, in the Peerage of the United Kingdom; Knight Grand Cross, of the Most Honourable Order of the Bath, Governor General of Canada, and Vice-Admiral of the same.

MAY IT PLEASE YOUR EXCELLENCY,—

To allow the undersigned Roman Catholic Archbishop of Manitoba, to lay respectfully before Your Excellency the following observations and requests:

Previous to the transfer of the North-West Territories to the Dominion of Canada, there prevailed a great uneasiness amongst the inhabitants of the said territories, with regard to the consequences of the transfer. The Catholic population especially, mostly of French origin, thought they had reason to foresee grievances on account of their language and their religion, if there were no special guarantee given, as to what they considered their rights and privileges. Their apprehensions gave rise to such an excitement that they resorted to arms, not through a want of loyalty to the Crown, but only through mere distrust towards Canadian authorities, which were considered as trespassing in the country previous to their acquisition of the same.

Misguided men joined together to prevent the entry of the would-be Lieutenant Governor. The news of such an outbreak was received with surprise and regret, both in England and Canada. All this took place in the autumn of 1870.

I was in Rome at the time, and at the request of the Canadian authorities, I left the Œcumenical Council to come and help the pacification of the country. On my way home, I spent a few days in Ottawa. I had the honour of several interviews with Sir John Young, then Governor General, and with his ministers. I was repeatedly assured that the rights of the people of Red River would be fully guarded under the new regime; that both Imperial and Federal authorities would never permit the new comers in the country to encroach on the liberties of the old settlers; that on the banks of the Red River as well as on the banks of the St. Lawrence, the people would be at liberty to use their mother tongue, to practice their religion and to have their children brought up according to their views. On the day of my departure from Ottawa, His Excellency handed to me a letter, a copy of which I attach to this as Appendix A, and in which are repeated some of the assurances given verbally: "The people," says the letter, "may rely that respect and attention will be extended to the different religious persuasions."

The Governor General, after mentioning the desire of Lord Granville, "to avail of my assistance from the outset," gave me a telegram he had received from the Most Honourable the Secretary of the Colonies, which I attach to this as Appendix B, and in which His Lordship expressed the desire that the Governor General would take "every care to explain where there is a misunderstanding, and to ascertain the wants and conciliate the good-will of all the settlers of the Red River."

I was, moreover, furnished with a copy of the proclamation issued by His Excellency on the 6th December, 1869, which I attach to this as Appendix C. In this proclamation we read: "Her Majesty commands me to state to you that she will be always ready through me as Her Representative, to redress all well-founded grievances," and any complaints that may be made, or desires that may be expressed to me as Governor General. By Her Majesty's authority, I do therefore assure you that "on your union with Canada, all your civil and religious rights and privileges will be respected."

A delegation from Red River had been proposed as a good means of giving and receiving explanations conducive to the pacification of the country. The desirability of this step was urged upon me as of the greatest importance, and the Premier of Canada in a letter I attach to this as Appendix B wrote to me. "In case a delegation is appointed to proceed to Ottawa, you can assure them that they will be kindly received and their suggestions fully considered. Their expenses coming here and returning and while staying in Ottawa will be defrayed by us"

I left after having received the above-mentioned instructions, and reached St. Boniface on the 9th March, 1870.

I communicated to the dissatisfied the assurances I had received, showing them the documents above cited. This largely contributed to dispel fears and to restore confidence. The delegation which had been delayed was definitely decided upon. The delegates appointed several weeks before received their commission afresh. They proceeded to Ottawa; opened negotiations with the federal authorities, and with such result that on the 3rd of May, 1870, Sir John Young telegraphed to Lord Granville: "Negotiations with delegates closed satisfactorily."

The negotiations provided that the denominational or separate schools will be guaranteed to the minority of the new Province of Manitoba; the French language received such recognition that it was decided it would be used officially both in parliament and in the courts of Manitoba.

The Manitoba Act was then passed by the House of Commons and Senate of Canada, and sanctioned by the Governor General.

The said Act received the supreme sanction of the Imperial Parliament, which thus took under its own safeguard the rights and privileges conferred by it.

I take the liberty to here cite most of the two clauses relating to denominational schools and official use of the French language.

Clause 22.—"In and for the province, the said legislature may exclusively make laws in relation to education, subject and according to the following: '10. Nothing in such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.' '20. An appeal shall lie to the Governor General in Council from any Act or decision of the Legislature of the province, or any other provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.'"

Clause 23.—"Either the English or the French language may be used by any person in the debates of the Houses of the Legislature, and both those languages shall be used in the respective records and journals of those houses; and either of these languages may be used by any person, or in any pleading or process in or issuing from any court of Canada established under the British North America Act, 1867, or in or from all or any of the courts of the province. The Acts of the Legislature shall be printed and published in both these languages."

According to the provisions above mentioned, the Legislature of Manitoba always recognized the Catholic schools as an integral part of the educational system of the province. The use of the French language met with the same recognition. Everything went on smoothly and harmoniously in that respect since the establishment of the province, until a few months ago.

Without stating any fair reason for the change, and without any public movement to determine it, the provincial cabinet of Mr. Greenway has brought before the Legislature and secured the passing of Acts of such a radical character against

the French and the Catholics, that a decided Protestant influential newspaper has not hesitated to say: "That is not legislation, but persecution."

I know that the laws I allude to are to be remitted to Your Excellency along with this, so I do not add a copy of the same.

I consider the laws just enacted by the Legislature of Manitoba to abolish the Catholic schools and the official use of the French language, as an unwarranted violation of the promises made before, and to secure the entry of this country into Confederation.

I consider such laws as a dead blow to the very constitution of this Province. They are detrimental to some of the dearest interests of a portion of Her Majesty's most loyal subjects. If allowed to be put in force, they will be a cause of irritation, destroy the harmony which exists in the country and leave the people under the painful and dangerous impression that they have been cruelly deceived, and because a minority they are left without protection, and that against the promises made twenty years ago by the then immediate representative of Her Majesty: "Right shall be done in all cases."

I therefore most respectfully and most earnestly pray that Your Excellency, as the representative of our most beloved Queen, should take such steps that, in your wisdom, would seem the best remedy against the evils that the above mentioned and recently enacted laws are preparing in this part of Her Majesty's domain.

With most profound respect and full confidence,

I remain

Your Excellency's humble and obedient servant,

ALEX., ARCH. OF ST. BONIFACE.

St. Boniface, 12th April, 1890.

A.

Letter to Bishop Taché.

Ottawa, February 16, 1870.

My Dear Lord Bishop,—I am anxious to express to you, before you set out, the deep sense of obligation which I feel is due to you for giving up your residence at Rome, leaving the great and interesting affairs in which you were engaged there, and undertaking at this inclement season the long voyage across the Atlantic, and long journey across this continent for the purpose of tendering service to Her Majesty's Government, and enguging in a mission in the cause of peace and civilization.

Lord Granville was anxious to avail of your valuable assistance from the outset, and I am heartily glad that you have proved willing to afford it so promptly and generously.

You are fully in possession of the views of my Government, and the Imperial Government, as I informed you, is earnest in the desire to see the North-West Territory united to the Dominion on equitable conditions.

I need not attempt to furnish you with any instructions for your guidance beyond those contained in the telegraphic message sent by Lord Granville on the part of the British Cabinet, in the proclamation which I drew up in accordance with that message, and in the letters which I addressed to Governor McTavish, your Vicar General, and Mr. Smith. In this last note, "All who have complaints to make" or wish to express, are called upon to address themselves to me, as Her Majesty's representative, and you may state with the utmost confidence that the Imperial Government has no intention of acting otherwise than in perfect good faith towards the inhabitants of the North-West. The people may rely that respect and attention will be extended to the different religious persuasions, that title to every description of property will be carefully guarded, and that all the franchises which have subsisted, or which the people may prove themselves qualified to exercise, shall be duly continued and liberally conferred.

In declaring the desire and determination of Her Majesty's Cabinet, you may safely use the terms of the ancient formula: "Right shall be done in all cases."

I wish you, dear Lord Bishop, a safe journey and success in your benevolent mission.

Believe me, with all respect, faithfully yours,

JOHN YOUNG."

B.

Telegram sent by Lord Granville to Sir John Young, dated the 25th November, 1869.

The Queen has learned with regret and surprise that certain misguided men have joined together to resist the entry of Her Lieutenant-Governor into Her Majesty's possessions in the Red River.

The Queen does not distrust her subjects' loyalty in those settlements, and must ascribe their opposition to a change, plainly for their advantage, to misrepresentation or misunderstanding. She relies upon your government for taking every care to explain where there is a misunderstanding, and to ascertain the wants and conciliate the good will of all the settlers of the Red River. But, at the same time, she authorizes you to tell them that she views with displeasure and sorrow their lawless and unreasonable proceedings, and she expects that if they have any wish to express, or complaints to make, they will address themselves to the Governor of the Dominion of Canada, of which, in a few days, they will form a part.

"The Queen relies upon her representative being always ready, on the one hand, to give redress to well-founded grievances, and on the other to repress with the authority with which she has entrusted him any unlawful disturbance."

C.

"*Proclamation.*

"V.R.

"By His Excellency the Right Honourable Sir John Young, Baronet, a Member of Her Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Honourable Order of the Bath, Knight of the Most Distinguished Order of St. Michael and St. George, Governor General of Canada:

"To all and every the loyal subjects of Her Majesty the Queen, and to all to whom these presents shall come,

"Greeting:

"The Queen has charged me, as her representative, to inform you that certain misguided persons in her settlement on the Red River have banded themselves together to oppose by force the entry into her North-Western Territories of the officer selected to administer, in her name, the Government, when the Territories are united to the Dominion of Canada, under the authority of the late Act of the Parliament of the United Kingdom; and that those parties have also forcibly, and with violence, prevented others of her loyal subjects from ingress into the country. Her Majesty feels assured that she may rely upon the loyalty of her subjects in the North-West, and believes those men who have thus illegally joined together have done so from some misrepresentation.

"The Queen is convinced that in sanctioning the union of the North-West Territories with Canada, she is promoting the best interests of the residents, and at the same time strengthening and consolidating her North American possessions as part of the British Empire. You may judge then of the sorrow and displeasure with which the Queen views the unreasonable and lawless proceedings which have occurred.

"Her Majesty commands me to state to you that she will always be ready, through me as her representative, to redress all well founded grievances, and any complaints that may be made, or desires that may be expressed to me as Governor-General. At the same time she has charged me to exercise all powers and authority with which she has invested me, in the support of order, and the suppression of unlawful disturbances.

"By Her Majesty's authority I do therefore assure you that on the union with Canada, all your civil and religious rights and privileges will be respected, your properties secured to you, and that your country will be governed, as in the past, under British laws, and in the spirit of British justice.

"I do further, under Her authority, entrust and command those of you who are still assembled and banded together, in defiance of law, peaceably to disperse and return to your homes, under the penalties of the law in case of disobedience. And I do lastly inform you, that in case of your immediate and peaceable obedience and dispersion, I shall order that no legal proceedings be taken against any parties implicated in these unfortunate breaches of the law.

"Given under my hand and seal at arms at Ottawa, this sixth day of December in the year of our Lord one thousand eight hundred and sixty-nine, and in the thirty, second year of Her Majesty's reign.

"By command,

"JOHN YOUNG.

"H. L. LANGEVIN, *Secretary of State.*"

D.

(Private)

DEPARTMENT OF JUSTICE,
OTTAWA, CANADA, February 16th, 1870.

MY DEAR LORD,—Before you leave Ottawa on your mission of peace, I think it well to reduce in writing the substance of the conversation I had the honour to have with you this morning.

I mark this letter "private" in order that it may not be made a public document, to be called for by Parliament prematurely; but you are quite at liberty to use it in such a manner as you may think most advantageous. I hope that ere you arrive at Fort Garry, the insurgents, after the explanations that have been entered into by Messrs. Thibault, De Salabery and Smith, will have laid down their arms, and allowed Governor McTavish to resume the administration of public affairs. In such case, by the Act of the Imperial Parliament of last session, all the public functionaries will still remain in power, and the Council of Assiniboia will be restored to their former position. Will you be kind enough to make full explanation to the Council on behalf of the Canadian Government, as to the feelings which animate, not only the Governor General, but the whole Government, with respect to the mode of dealing with the North-West. We have fully explained to you, and desire you to assure the council authoritatively, that it is the intention of Canada to grant to the people of the North-West the same free institutions which they themselves enjoy.

Had not these unfortunate events occurred, the Canadian Government had hoped, long ere this, to have received a report from the council, through Mr. McDougall, as to the best means of speedily organizing the Government with representative institutions. I hope that they will be able to immediately take up that subject, and to consider and report, without delay, on the general policy that should immediately be adopted.

It is obvious that the most inexpensive mode for the administration of affairs should at first be adopted, as the preliminary expense of organizing the Government after union with Canada, must, in the first be defrayed from the Canadian treasury, there will be a natural objection in the Canadian Parliament to a large expenditure.

As it would be unwise to subject the Government of the territory to a recurrence of the humiliation already suffered by Governor McTavish, you can inform him that if he organizes a local police, of twenty-five men, or more if absolutely necessary, that the expense will be defrayed by the Canadian Government.

You will be good enough to endeavour to find out Monkman, the person to whom through Colonel Dennis, Mr. McDougall gave instructions to communicate with the Salteux Indians. He should be asked to surrender his letter, and informed that he ought not to proceed upon it. The Canadian Government will see that he is compensated for any expense that he has already incurred.

In case a delegation is appointed to proceed to Ottawa, you can assure them that they will be kindly received, and their suggestions fully considered. Their expenses coming here and returning, and whilst staying in Ottawa, will be defrayed by us.

You are authorized to state that the two years which the present tariff shall remain undisturbed, will commence from the 1st January, 1871, instead of last January, as first proposed.

Should the question arise as to the consumption of any stores or goods belonging to the Hudson Bay Company by the insurgents, you are authorized to inform the leaders that if the company's Government is restored, not only will there be a general amnesty granted, but in case the company should claim the payment for such stores, that the Canadian Government will stand between the insurgents and all harm.

Wishing you a prosperous journey and happy results.

I beg to remain, with great respect, your very faithful servant,

JOHN A MACDONALD.

To the Right Reverend the Bishop of St. Boniface, Fort Garry.

No. 8.

To His Excellency the Governor General in Council:—

The Humble Petition of the undersigned Members of the Roman Catholic Church in the Province of Manitoba, presented on behalf of themselves and their co-religionists in the said Province, Sheweth as follows:—

1. Prior to the passage of the Act of the Dominion of Canada, passed in the thirty third year of the reign of Her Majesty Queen Victoria, chapter three, known as the Manitoba Act, and prior to the Order in Council issued in pursuance thereof, there existed in the territory now constituting the Province of Manitoba, a number of effective schools for children.

2. These schools were denominational schools, some of them being regulated and controlled by the Roman Catholic Church, and others by various Protestant denominations.

3. The means necessary for the support of the Roman Catholic Schools were supplied to some extent by school fees paid by some of the parents of the children who attended the schools and the rest was paid out of the funds of the church contributed by its members.

4. During the period referred to, Roman Catholics had no interest in or control over the schools of the Protestant denominations, and the members of the Protestant denominations had no interest in or control over the schools of the Roman Catholics. There were no public schools in the sense of state schools. The members of the Roman Catholic Church supported the schools of their own church for the benefit of Roman Catholic children and were not under obligation to, and did not contribute to the support of, any other schools.

5. In the matter of education, therefore, during the period referred to, Roman Catholics were as a matter of custom and practice separate from the rest of the community.

6. Under the provisions of the Manitoba Act it was provided that the Legislative Assembly of the Province should have the exclusive right to make laws in regard to education, subject however and according to the following provisions:

(1) "Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have by law or practice in the Province at the Union."

(2) "An appeal shall lie to the Governor General in Council from any act or decision of the Legislature of the Province, or of any Provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education."

(3) "In case any such Provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council or any appeal under this section is not duly executed by the proper Provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General under this section."

7. During the first Session of the Legislative Assembly of the Province of Manitoba, an Act was passed relating to education, the effect of which was to continue to the Roman Catholics that separate condition with reference to education which they had enjoyed previous to the erection of the province.

8. The effect of the statute so far as the Roman Catholics were concerned was merely to organize the efforts which Roman Catholics had previously voluntarily made for the education of their own children. It provided for the continuance of schools under the sole control and management of Roman Catholics; and of the education of their children according to the methods by which alone they believe children should be instructed.

9. Ever since the said legislation and until the last Session of the Legislative Assembly, no attempt was made to encroach upon the rights of the Roman Catholics so confirmed to them as above mentioned, but during said Session Statutes were passed (53 Vic., caps. 37 and 38) the effect of which was to deprive the Roman Catholics altogether of their separate condition in regard to education; to merge their schools with those of the Protestant denominations, and to require all members of the community whether Roman Catholic or Protestant to contribute through taxation to the support of what are therein called public schools, but which are in reality a continuation of the Protestant schools.

10. There is a provision in the said Act for the appointment and election of an Advisory Board and also for the election in each municipality of school trustees. There is also a provision that the said Advisory Board may prescribe religious exercises for use in schools, and that the said school trustees may, if they think fit, direct such religious exercises to be adopted in the schools in their respective districts. No further or other provision is made with reference to religious exercises, and there is none with reference to religious training.

11. Roman Catholics regard such schools as unfit for the purposes of education, and the children of Roman Catholic parents cannot and will not attend any such schools. Rather than countenance such schools, Roman Catholics will revert to the voluntary system in operation previous to the Manitoba Act and will at their own private expense establish, support and maintain schools in accordance with their principles and their faith, although by so doing they will have in addition thereto to contribute to the expense of the so-called public schools.

12. Your petitioners submit that the said Act of the Legislative Assembly of Manitoba is subversive of the rights of Roman Catholics guaranteed and confirmed to them by the Statute erecting the Province of Manitoba, and prejudicially affects the rights and privileges with respect to Roman Catholic schools, which Roman Catholics had, in the Province, at the time of its union with the Dominion of Canada.

13. Roman Catholics are in a minority in the said Province.

14. The Roman Catholics of the Province of Manitoba, therefore, appeal from the said Act of the Legislative Assembly of the Province of Manitoba.

Your petitioners therefore pray:

1. That Your Excellency the Governor General in Council may entertain the said appeal, and may consider the same, and may make such provisions and give such directions for the hearing and consideration of the said appeal as may be thought proper.

2. That it may be declared that such Provincial law does prejudicially affect the rights and privileges with regard to denominational schools which Roman Catholics had by law or practice in the Province at the Union.

3. That such directions may be given and provisions made for the relief of the Roman Catholics of the Province of Manitoba as to Your Excellency in Council may seem fit.

And your petitioners will ever pray.

† ALEX, Arch. of St. Boniface,
† HENRI F., EV. d'ANEMON,
JOSEPH MESSIER, P.P. of St. Boniface,
F. A. BERNIER,
M. A. GIRARD, Senator,
J. DUBUC,
A. A. LA RIVIÈRE, M.P.,
L. A. PRUDHOMME,
JAMES E. PRENDERGAST, M.P.P.,
ROGER MARION, M.P.P.,

and 4,257 more names.

SUPPLEMENTARY RETURN

(63*b*)

To an ADDRESS of the HOUSE OF COMMONS, dated the 5th of May, 1891;—For copies of all correspondence, petitions, memorials, briefs, and factums, and of any other documents submitted to the privy council in connection with the abolition of separate schools in the province of Manitoba by the legislature of that province; also copies of reports to and orders in council thereon; also copies of any Act or Acts of said legislature abolishing said separate schools or modifying in any way the system existing prior to 1890.

By order.

J. A. CHAPLEAU,
Secretary of State.

WINNIPEG, MANITOBA, 15th April, 1891.

SIR,—I have the honour to forward to you by this day's mail for your information a copy of the Appeal Book of Barrett vs. the City of Winnipeg.

I have, etc.,

JOHN K. BARRETT.

To the Hon. the Secretary of State, Ottawa, Canada.

INDEX.

IN THE SUPREME COURT OF CANADA.

IN THE MATTER OF BY-LAWS 480 AND 483 OF THE CITY OF WINNIPEG.

APPLICATION OF JOHN KELLY BARRETT TO TEST THE MANITOBA PUBLIC SCHOOLS ACT OF 1890.

In the Queen's Bench.

In the matter of an application to quash By-law 480 and 483 of the city of Winnipeg.

I, John Kelly Barrett, of the city of Winnipeg, in the county of Selkirk and province of Manitoba, gentleman, make oath and say:

1. That I am a rate-payer and resident of the city of Winnipeg aforesaid and have resided in the said city continuously for the past five years, and am a member of the Roman catholic church.

2. On and prior to the thirtieth day of April last a school district (having some years before been established) existed in the city of Winnipeg, and such school district was under the direction and management of the corporation known as "The School Trustees for the Catholic School District for Winnipeg No. 1, in the Province of Manitoba."

3. The said corporation has established and in operation a number of schools in Winnipeg, under the provisions of the various provincial statutes relating to schools, to one of which, namely, St. Mary's school, situate on Hargrave Street, I have for three years past, sent my children for instruction, which children are aged respectively ten, eight and five years.

4. That the said St. Mary's school is still in existence and the same teaching and religious exercises are continued as before the passing of the said act and my said children still attend said school.

5. The paper writing now shown to me marked with the letter "A" is a true copy of by-law no. 480, passed by the council of the city of Winnipeg, on the fourteenth day of July last, and the same is certified under the hand of the clerk of the said city and under the corporate seal thereof.

6. The said paper writing so certified as aforesaid was received by me from said clerk.

7. The paper writing now shown to me marked with the letter "B" is a true copy of by-law no. 483 passed by the council of the city of Winnipeg on the twenty-eighth day of July last and certified under the hand of the clerk of the said city and under the corporate seal thereof, and such paper writing was received by me from the said clerk.

8. I am interested in the said by-law by virtue of being a resident and rate-payer of said city.

9. The paper writing now shown to me marked with the letter "C" is a true copy of a requisition sent to the clerk of the said city by the school trustees for the protestant school district of Winnipeg, no. 1, on the twenty-eighth day of April last.

10. The paper writing now shown to me marked with the letter "D" is a true copy of the requisition sent to the clerk of the said city by the school trustees for the

catholic school district of Winnipeg, no. 1, in the province of Manitoba, on the twenty-ninth day of April last.

11. That the estimate of all sums for the lawful purposes of the city of Winnipeg for the present year as required to be made by section 283 of the municipal act passed in the fifty-third year of the reign of her majesty Queen Victoria, chapter 31, were based upon the two requisitions above referred to, copies of which are marked with the letters "C" and "D" as aforesaid, which requisitions were presented to the council of said city of the fifth day of May last.

12. That the amounts of $75,000 and $2,550, mentioned in the said exhibits "C" and "D," respectively, form part of the sum $377,744.43 mentioned in said exhibit "A."

13. The effect of the said by-laws is that one rate is levied upon all protestants and Roman catholic rate-payers in order to raise the amount mentioned in said exhibits "C" and "D," and the result to individual rate-payers is, that each protestant will have to pay less than if he were assessed for protestant schools alone, and each Roman catholic will have to pay more than if he were assessed for Roman catholic schools alone.

14. I have read the affidavit sworn to in this matter on the third day of October instant, by the Most Reverend Alexander Taché, and I say that so far as the same lies within my personal knowledge the same is true; as to the rest, I believe the same to be true.

JOHN K. BARRET.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this eighth day of October, A.D. 1890.

HORACE E. CRAWFORD,
A Commissioner in O. B., etc.

In the Queen's Bench.

In the matter of an application to quash by-law 480 and 483 of the city of Winnipeg.

I, Alexander Taché, of the town of St. Boniface in the county of Selkirk and province of Manitoba, archbishop of the Roman catholic ecclesiastical province of St. Boniface, make oath and say:

1. That I have been a resident continuously of this county since eighteen hundred and forty-five as a priest in the Roman catholic church, and as bishop thereof since the year eighteen hundred and fifty, and now am the archbishop and metropolitan of the said church, and I am personally aware of the truth of the matters herein alleged.

2. Prior to the passage of the act of the dominion of Canada passed in the thirty-third year of the reign of her majesty Queen Victoria, chapter three, known as the Manitoba act and prior to the order in council issued in pursuance thereof, there existed in the territory now constituting the province of Manitoba a number of effective schools for children.

3. These schools were denominational schools, some of them being regulated and controlled by the Roman catholic church, and others by various protestant denominations.

4. The means necessary for the support of the Roman catholic schools were supplied to some extent by school fees paid by some of the parents of the children who attended the schools and the rest was paid out of the funds of the church, contributed by its members.

5. During the period referred to, Roman catholics had no interest in or control over the schools of the protestant denominations and the members of the protestant denominations had no interest in or control over the schools of Roman catholics. There were no public schools in the sense of state schools. The members of the Roman catholic

church supported the schools of their own church for the benefit of Roman catholic children and were not under obligation to, and did not contribute to the support of any other schools.

6. In the matter of education, therefore, during the period referred to, Roman catholics were as a matter of custom and practice separate from the rest of the community, and their schools were all conducted according to the distinctive views and beliefs of Roman catholics as herein set forth.

7. Roman catholic schools have always formed an integral part of the work of the Roman catholic church. That church has always considered the education of the children of Roman catholic parents as coming peculiarly within its jurisdiction. The school in the view of the Roman catholics is in a large measure the "Children's Church" and wholly incomplete and largely abortive if religious exercises be excluded from it. The church has always insisted upon its children receiving their education in schools conducted under the supervision of the church, and upon them being trained in the doctrines and faith of the church. In education the Roman catholic church attaches very great importance to the spiritual culture of the child, and regards all education unaccompanied by instruction in its religious aspects as possibly detrimental and not beneficial to children. With this regard the church requires that all teachers of children shall not only be members of the church, but shall be thoroughly imbued with its principles and faith; shall recognize its spiritual authority and conform to its directions. It also requires that such books be used in the schools, with regard to certain subjects as shall combine religious instruction with those subjects, and this applies peculiarly to all history and philosophy.

8. The church regards the schools provided for by "The Public Schools Act" and being chapter 38 of the statutes passed in the reign of her majesty Queen Victoria, in the fifty-third year of her reign, as unfit for the purpose of educating their children, and the children of Roman catholic parents will not attend such schools. Rather than countenance such schools, Roman catholics will revert to the system of operation previous to the Manitoba act, and will establish, support and maintain schools in accordance with their principles and faith as aforementioned.

9. Protestants are satisfied with the system of education provided for by the said act, "The Public Schools Act," and are perfectly willing to send their children to the schools established and provided for by the said act. Such schools are in fact similar in all respects to the schools maintained by the protestants under the legislation in force immediately prior to the passage of the said act. The main and fundamental difference between protestants and catholics, with reference to education, is that while many protestants would like education to be of a more distinctly religious character than that provided for by the said act, yet they are content with that which is so provided and have no conscientious scruples against such a system; the catholics on the other hand insist and have always insisted upon education being thoroughly permeated with religion and religious aspects. That causes and effects in science, history, philosophy and aught else should be constantly attributed to the Deity and not taught merely as causes and effects.

10. The effect of "The Public Schools Act" will be to establish public schools in every part of Manitoba where the population is sufficient for the purpose of a school and to supply in this manner, education to children free of charge to them or their parents further than their share, in common with other members of the community of the amounts levied under and by virtue of the provisions contained in the act.

11. In case Roman catholics revert to the system in operation previous to the Manitoba act, they will be brought in direct competition with the said public schools, owing to the fact that the public schools will be maintained at public expense, and the Roman catholic schools by school fees and private subscription, the latter will labour under serious disadvantage. They will be unable to afford inducements and benefits to children to attend such schools equal to those afforded by public schools, although they would be perfectly able to compete with any or all schools unaided by law-enforced support.

12. When in the foregoing paragraphs I speak of the faith or belief of the Roman catholic church, I speak not only for myself and the church in its corporate capacity, but for its members.

ALEX. TACHÉ,
Archbishop of St. Boniface, O.M.I.

Sworn before me at the city of Winnipeg, in the county of Selkirk, this third day of October, A.D. 1890.

EDMOND TRUDEL,
A Commissioner in B.R., etc.

BY-LAW No. 480.

A by-law to authorize an assessment for city and school purposes in the city of Winnipeg for the current municipal year 1890.

Whereas it is expedient and necessary for the city purposes to raise the sum of three hundred and seventy thousand seven hundred and forty-four 43.100 dollars for interest on debentures and ordinary current municipal and school expenditure for the current year by a tax on all real and personal property appearing on the assessment rolls of the city of Winnipeg for the year 1890;

And whereas the amount of the whole of the rateable property of the city of Winnipeg, as shown by the last revised assessment rolls of the said city of Winnipeg, is eighteen millions six hundred and twelve thousand four hundred and ten dollars ($18,612,410.00), and it will require a rate of two cents on the dollar on the amount of the said rateable property to raise the sum so required as aforesaid for interest on debentures now accruing due, and for the ordinary current municipal and school expenditure for the year A.D. 1890;

Therefore, the council of the city of Winnipeg in council assembled enacts as follows:

1. There shall be raised, levied or collected a tax of two cents on the dollar upon the whole assessed value of the real and personal property in the city of Winnipeg, according to the last revised assessment rolls for the year 1890, to provide for the payment of the interest on debentures now accruing due, and for the ordinary current municipal expenditure and for the schools of the city for the year A.D. 1890.

2. The sum of two dollars ($2.00) poll tax shall be levied and collected from every person residing within the city of Winnipeg, and being of the age of twenty-one years and upwards, who has not been assessed upon the assessment rolls of the city of Winnipeg, or whose taxes do not amount to two dollars, in which latter case a total tax of two dollars only shall be levied, which taxes shall be collected in the same manner as other taxes.

The taxes and rates hereby imposed shall be considered to have been imposed and to be due on and from the first day of October, A.D. 1890. Done and passed in council assembled at the city of Winnipeg, this fourteenth day of July, A.D. 1890.

ALEX. BLACK, Ald.,
Acting Mayor.
C. J. BROWN, *City Clerk.*

I hereby certify that I have compared the above, consisting of two pages of writing, with the original by-law no. 480, of the city of Winnipeg, and that the same is a true and correct copy of such by-law no. 480 of the city of Winnipeg.

Dated this 18th September, A.D. 1890.

C. J. BROWN, *City Clerk.*

BY-LAW No. 483.

A by-law to amend by-law no. 480, of the city of Winnipeg.

Whereas it has been deemed expedient and necessary to amend by-law No. 480, of the city of Winnipeg, being a by-law to authorize an assessment for city and school purposes in the city of Winnipeg, for the current municipal year, A.D. 1890;

And whereas the property of certain corporations is exempt for a period of years from ordinary municipal taxation and liable only for school rates; and it is therefore desirable to distinguish the rates providing for the city schools but so that the total several rates shall not exceed two cents on the dollar.

Now therefore, the mayor and council of the city of Winnipeg in council assembled enact as follows:

1. By-Law no. 480, entitled a by-law to authorize an assessment for city and school purposes in the city of Winnipeg for the current municipal year, 1890, is hereby amended.

(A.) By adding to the second or last recital the words following: "Whereof the rate of fifteen 4-5ths mills on the dollar shall be for interest on debentures now accruing due and for the ordinary current municipal expenditure, and the rate of four and one-fifth mills on the dollar shall be for school expenditure for the year 1890."

(B.) And by inserting after the figures "1890" in the fifth line of the first section of said by-law, the words following: "Of which the amount of fifteen and four-fifth mills on the dollar shall be."

(C.) And by inserting after the word "and" in the seventh line of said first section the words following: "And four and one-fifth mills on the dollar."

Done and passed in council assembled at the city of Winnipeg, this twenty-eighth day of July, 1890.

ALEX. BLACK, ALD.,
Acting Mayor.
C. J. BROWN, *City Clerk.*

I hereby certify that I have compared the above, consisting of two pages of writing, with the original by-law no. 483 of the city of Winnipeg, and that the same is a true and correct copy of such by-law no. 483 of the city of Winnipeg.

Dated this 18th September, A.D. 1890.

C. J. BROWN, *City Clerk.*

I, Charles James Brown, of the city of Winnipeg, in the county of Selkirk and province of Manitoba, city clerk for Winnipeg aforesaid, do hereby certify;

That the estimate of all the sums required for the purposes of the city of Winnipeg for the fiscal year ending the thirtieth day of April, A.D. 1891, were duly submitted to, and approved by the council of the said city.

That according to such estimates, the only amounts provided for school purposes were as follows:

The Winnipeg protestant schools	$75 000
The Winnipeg catholic schools	2 550

That such estimates for school purposes were based upon two requisitions which were received by me as clerk and were presented to the said council on the fifth day of May, A.D. 1890, and which were respectively in the words and figures following to wit:

"PROTESTANT SCHOOL BOARD OF THE CITY OF WINNIPEG,
"OFFICES CITY HALL, WINNIPEG, April 28th, 1890.

P. C. MCINTYRE, Chairman,
STEWART MULVEY, Sec.-Treas.

"SIR,—I am directed by the board of school trustees for the protestant school district of Winnipeg no. 1 in the province of Manitoba, to ask the municipal council of the city of Winnipeg, to levy and collect for school purposes, a sum of seventy-five ($75,000)

thousand dollars for the school year of 1890. Herewith please find a list of names with their respective assessment, liable to be assessed for support of protestant schools."

"Your obedient servant,
STEWART MULVEY, *Sec.-Treasurer.*

C. J. BROWN, CITY CLERK, &c., &c."

"BOARD OF CATHOLIC SCHOOL TRUSTEES, WINNIPEG, April 29th, 1890.

"To CHAS. BROWN, ESQ., City Clerk, City.

"SIR,—I am instructed by the school trustees of the Winnipeg catholic school district, to provide you, and I transmit herewith, their estimate for the sums required to be levied for the support of their schools by taxation for the year 1890, exclusive of the taxes on corporate bodies. I also transmit list of names of persons liable to be assessed for the same. I am to request that you will submit said estimate and list to the mayor and aldermen in council, of the city of Winnipeg, for levy and collection by them in compliance with subsection (d) of section 17, of the school amendment act, 1885.

"I am, &c.,
"GEO. E. FORTIN, *Sec.-Treasurer.*

"Extract from the minutes of a meeting of the school trustees for the catholic school district of Winnipeg, no. 1, held at the city of Winnipeg, on the twenty-ninth day of April, A.D. 1890.

"Present: Messrs. N. Bawlf, chairman, J. K. Barrett, John O'Connor, D. B. McIlroy and M. McManus.

"It was moved by Mr. J. K. Barrett, seconded by Mr. McManus, that to supplement the government grant in aid of the schools of this district, the sum of two thousand five hundred and fifty dollars ($2,550) be levied by taxation upon catholic ratepayers of the catholic school district of the city of Winnipeg, for the year eighteen hundred and ninety (1890), exclusive of the taxes to be levied upon the corporate bodies, and that the secretary-treasurer forward the said estimate with a list of the Catholic ratepayers liable to be assessed therefore to the city of Winnipeg, on or before the 30th day of April, instant.—Carried. "A true copy.

(Corporate seal) "GEO. E. FORTIN.
"*Secretary-Treasurer, S. T., for the C. S. D. Winnipeg.*"

Dated this eighteenth day of September, A.D. 1890.

C. J. BROWN, *City Clerk.*

In the Queen's Bench.

In the matter of an application to quash by-laws 480 and 483 of the city of Winnipeg.

Upon the application of John Kelly Barrett, a resident ratepayer of the said city of Winnipeg, and upon hearing read copies of the said by-laws, certified under the hand of the clerk of the said city and under the corporate seal of the said city and also the affidavits of the said John Kelly Barrett and the Most Reverend Alexander Taché, and upon hearing the attorney for the said applicant let the attorney for the corporation of the city of Winnipeg attend before the presiding judge in chambers, at the court house in the city of Winnipeg, at the hour of half-past ten o'clock in the forenoon of the twentieth day of October, instant, and shew cause why an order should not be made by the said judge quashing the said by-laws for illegality, and that upon the following among other grounds;

1. That because by the said by-laws the amounts to be levied for school purposes for the protestant and catholic schools are united, and one rate levied upon protestants and Roman catholics alike for the whole sum.

T. W. TAYLOR, *Chief Justice.*

Dated in Chambers, the 7th day of October, 1890.

In the Queen's Bench.

In the matter of an application to quash by-laws 480 and 483 of the city of Winnipeg.

I, George Bryce, of the city of Winnipeg, in the county of Selkirk, in the province of Manitoba, professor in Manitoba college, make oath and say:

1. That I have been a resident of the province of Manitoba since the year 1871. That I am the minister of the presbyterian church longest resident in the province, that I have been in constant communication with the officers and councils of the church, having been the first moderator of the synod of Manitoba and the North-West Territories of the presbyterian church in Canada, and I am personally aware of the truth of the matters herein alleged.

2. That I am familiar with opinions of the presbyterians of the province, in the years immediately succeeding the entrance of Manitoba into confederation in 1870, and am aware that the presbyterians of this province did not claim to have the church schools, which has been previously voluntarily maintained by them or by the church for them continued to them at cost to the general public.

3. That in founding Manitoba college, in November, 1881, I took over the highest class of Kildonan school as the beginning of the college, which had thus far continued a purely church institution, and for which I never heard the claim advanced that we were entitled to any consideration under the Manitoba act, indeed I always considered the government schools as entirely different and, up to 1871, unknown in the country, and for several years we did take younger students into our church college who might have been educated in the government schools alongside.

4. That about the year 1876 a strong agitation took place in the Province to have one public school system established, but this agitation failed to obtain effect in legislation.

5. The presbyterian synod of Manitoba and the North-West Territories which represents the largest religious body in Manitoba, passed in May, 1890, a resolution heartily approving of the public school act of this year, and I believe that it is approved of by the great majority of the presbyterians of Manitoba.

6. That the presbyterian church is most solicitous for the religious education of all its children. It takes great care in the vows required of parents at the baptism of their children, and in urging its ministers to teach from the pulpit the duty of giving moral and religious training in the family. It is most energetic in maintaining efficient sunday schools, which have been called the "Children's Church," and in requiring the attendance of the children at the church services, which is made a great means of instruction. I think it is our firm belief that this system joined with the public school system has produced and will produce a moral, religious and intelligent people.

7. That the presbyterians are thus able to unite with their fellow christians of other churches in having taught in the public schools (which they desire to be taught by christian teachers) the subjects of a secular education, and I cannot see that there should be any conscientious objection on the part of the Roman catholics to attend such schools, provided adequate means be provided of giving elsewhere such moral and religious training as may be desired; but on the other hand there should be many social and national advantages.

8. I believe all presbyterians are anxious to have science, history and philosophy taught in such a manner as will intelligently recognize the divine purpose and influence in human affairs, but certainly I cannot desire to teach, as would be covered by the plea sometimes advanced that the instrumentality of evil and the deeds of bad men should be "constantly attributed to the deity," nor do I believe the tendency of the public school as established in Manitoba at present to be toward any atheistic or irreligious goal, but that it will follow the current opinions of the settlers of Manitoba, a remarkably large number of whom are religious and intelligent.

9. That instead of it being a detriment that public schools will be "established in every part of Manitoba where the population is sufficient for the purpose of a school" it will be a benefit, as up to the present time large numbers of Roman catholic children

scattered through the general population have been able to get no education, and are in danger of growing up an illiterate class.

10. That when in the foregoing paragraphs I speak of the belief of presbyterians, I speak simply of what I consider their belief to be, and I speak only for myself, as it is a privilege for every presbyterian to think for himself, and to be directly responsible to God, and in my opinion the general feeling of what are known as the protestant denominations is as I have indicated above.

GEORGE BRYCE.

Sworn before me at the city of Winnipeg, in the county of Selkirk, this 22nd day of October, A.D., 1890.

A. E. RICHARDS, *A Commissioner in B. R., etc.*

In the Queen's Bench.

In the matter of an application to quash by-laws 480 and 483 of the city of Winnipeg.

I, Wm. Hespeler, of the county of Selkirk in the province of Manitoba, financial agent, make oath and say:

1. That for the last seventeen years I have been a resident in the province of Manitoba.

2. That for upwards of seven years I was a member of the board of education for the said province.

3. To my knowledge, His Grace Archbishop Taché, archbishop of the Roman catholic ecclesiastical province of Manitoba, has been a member and chairman of the catholic section of the late board of education for four years, and I believe for a great deal longer.

4. That priests and leading laymen of the Roman catholic church were members of the catholic section of said board, and a number of priests of said Roman catholic church were inspectors of schools under said board.

5. I am satisfied that the school acts in force in this province prior to the first day of May last, were acceptable to the Roman catholic church.

WM. HESPELER.

Sworn before me at the city of Winnipeg, in the county of Selkirk, this 21st day of October, 1890.

R. M. THOMPSON, *A Commissioner in B. R., &c.*

In the Queen's Bench

In the matter of an application to quash by-laws 480 and 483, of the city of Winnipeg.

I, Alexander Polson, of the city of Winnipeg, in the county of Selkirk, in the province of Manitoba, health inspector, make oath and say:

1. That for a period of fifty years I have been a resident in the province of Manitoba.

2. That schools which existed prior to the province of Manitoba entering confederation were purely private schools and were not in any way subject to public control nor did they in any way receive public support.

3. No school taxes were collected by any authority prior to the province of Manitoba entering confederation and there were no means by which any person could be forced by law to support any of said private schools. I think the only public revenue of any kind then collected was the customs duty usually four per cent.

ALEXANDER POLSON.

Sworn before me at the city of Winnipeg, in the county of Selkirk, this 22nd day of October, A.D., 1890.

J. H. MUNSON, *A Commissioner in B. R., &c.*

In the Queen's Bench.

In the matter of an application to quash by-laws 480 and 483 of the city of Winnipeg.

I, John Sutherland, of the parish of Kildonan, in the county of Selkirk, in the province of Manitoba, farmer, make oath and say:

1. That for the period of fifty-three years I have been a resident in the province of Manitoba.

2. That schools which existed prior to the province of Manitoba entering confederation were purely private schools, and were not in any way subject to public control nor did they in any way receive public support.

3. No school taxes were collected by any authority prior to the province of Manitoba entering confederation, and there were no means by which any person could be forced by law to support any of said private schools. I think the only public revenue of any kind then collected was the customs duty, usually four per cent.

JOHN SUTHERLAND.

Sworn before me at the city of Winnipeg, in the county of Selkirk, this 22nd day of October, A.D., 1890.

T. H. GILMOUR, *A Commissioner in B. R., &c.*

In the Queen's Bench.

In the matter of an application to quash by-laws 480 and 483 of the city of Winnipeg.

Upon reading a summons herein dated this 7th day of October, 1890, and upon reading the affidavits and papers filed, and upon hearing the attorney on behalf of the applicant, John Kelly Barrett, and of the said the city of Winnipeg.

I do order that the said summons be, and the same is hereby dismissed with costs to be paid by the said John Kelly Barrett, of the said the city of Winnipeg, forthwith on taxation thereof by the master.

A. C. KILLAM, *J.*

Dated at Chambers this 24th day of November, 1890.

In the Queen's Bench.

IN RE BY-LAWS NOS. 480 AND 483, CITY OF WINNIPEG.

November 24th, 1890.

KILLAM, *J.*

This is an application to quash two by-laws of the municipal corporation of the city of Winnipeg, numbered 480 and 483. The application is made under the 258th section of the municipal act, 53 Vic., c. 51 M.

By-law no. 480 is that passed for levying a rate for municipal and school purposes in the city of Winnipeg for the year 1890. It recites the aggregate amount necessary to be raised to meet interest on debentures and ordinary current municipal and school purposes without distinction, and the total value of the rateable property in the city as shown by last revised assessment rolls, and enacts that there shall be raised, collected and levied, a rate of two cents on the dollar upon the whole assessed value of the real and personal property in the city of Winnipeg according to such rolls for meeting the expenditures mentioned.

By-law no. 483 simply amends the former by-law. It recites that the property of certain corporations is exempt from ordinary municipal taxation and liable only for school rates and that it is desirable to distinguish the rates providing for city schools, but so that the total several rates shall not exceed two cents on the dollar, and proceeds to amend the other by-law so as to make the rate 15. 4–5 mills on the dollar for interest

on debentures and the ordinary current municipal expenditure for the year; and 4. 1–5 mills for school purposes for the year.

The summons asks that these by-laws be quashed "for illegality and that for the following among other grounds: That because by the said by-laws the amounts to be levied for school purposes for the protestant and Roman catholic schools are united, and one rate levied upon protestants and Roman catholics alike for the whole sum." No other ground is specifically taken in the summons.

The applicant shows that he is a rate-payer and a resident of the city of Winnipeg, and a member of the Roman catholic church, and that the effect of these by-laws is that one rate is levied upon all protestant and Roman catholic rate-payers in order to raise the amount required for school purposes, and the result to individual rate-payers is "that each protestant will have to pay less than if he were assessed for protestant schools alone, and each Roman Catholic will have to pay more than if he were assessed for Roman catholic schools alone."

By the Manitoba school act passed in 1881, 44 Vic., 3rd sess., c. 4, and the previous statutes of this province, the public schools were under the control of a body known as the board of education, divided into two sections, composed respectively of the protestant and Roman catholic members of the board, and two superintendents, one being taken from each section of the board. Under the various statutes enacted from time to time, provisions were made for the formation in different ways of school districts under the control of the different sections of the board and the corresponding superintendents. The system which finally prevailed was first adopted in 1875 by the act, 38 Vic., c. 27, M., but various amendments in details were made from time to time. The last complete act was that of 44 Vic., of which amendments are found in the statutes of nearly every year previous to 1890. Under this legislation the school districts were directly governed by school trustees elected respectively by protestant and Roman catholic ratepayers who constituted in each district a body corporate known finally as "The School Trustees for the Protestant—or Catholic as the case might be—School District of number in the Province of Manitoba." See 38 Vic., c. 27; 42 Vic., c. 2; C. S. M., c. 62; 44 Vic., 3rd sess., c. 4; 48 Vic., c. 27, s. 23. These school districts, protestant and catholic respectively, were wholly independent of each other, and might cover the territory wholly or partially. In cases of incorporated cities and towns, the respective districts of each denomination were usually co-terminous with the cities or towns themselves. See 44 Vic., c. 4, s. 15; 47 Vic., c. 37, s. 4; 47 Vic., c. 54, s. 2.

With the exception of some limited rates charged to non-residents having children attending the schools, the moneys for the support of schools were derived partly from grants by the legislature of provincial moneys, and partly by direct taxation levied by the trustees themselves or by the municipal officers or partly by each.

The sums granted by the legislature were apportioned between the two sections of the board of education for distribution by them among their respective schools. Provision was made to secure the levying of the taxes for the support of the schools in the protestant school districts upon the property of protestants alone, and in Roman catholic districts, upon that of Roman catholics alone, with an apportionment between them of taxes upon the property of corporations and of those persons who could not be considered to belong to either body. See 44 Vic., 3rd sess., c. 4, ss. 28, 30, 31, 32; 47 Vic., c. 37, s. 11.

One method of realizing by assessment was the submission by the trustees of a school district to the council of the municipality in which the district was situate, of an estimate of the sums required by such trustees for school purposes, during the current school year, the municipal council being required to levy and collect the sums by assessment upon the real and personal property, in the district of the protestants and Roman catholics respectively. See 44 Vic. c. 4. ss. 25, 27, 28, 30, 31, 32; 46 & 47 Vic. c. 4. s. 8. 47 Vic. c. 37. ss. 8, 10, 11; 48 Vic. c. 27. s. 9; s-ss (a) (f) s. 10. s-s (d), s. 17, s-s (d) 50 Vic. c. 18, ss. 7, 8.

By the 182nd section of the public schools act, 53 Vic., c. 38 M. all of these former statutes were repealed, and by that and the next preceding act, c. 37, the legis-

lature assumed to establish an entirely different system. A department of education is created to consist of the executive council or a committee thereof with certain prescribed powers in reference to education, and provision was also made for the election and appointment of an advisory board with certain defined functions. Approximately it may be said that these bodies took the place of the old board of education.

By section 3 of the public schools act, "all protestant and catholic school districts, together with all elections and appointments to office, all agreements, contracts, assessments and rate bills heretofore duly made in relation to protestant or catholic schools, and existing when this act comes into force, shall be subject to the provisions of this act."

By section 4, the term for which each school trustee held office was to continue as if created under the act. By section 86, sub-sec. 5, the board of school trustees in cities, towns and villages is "to prepare from time to time and lay before the municipal council of the city, town or village on or before the first day of August, an estimate of the sums which they think requisite for all necessary expenses of the schools under their charge."

By the 90th section, the council of every rural municipality is to levy on the taxable property in each school district the sum required by such district in addition to the legislative grant and a general municipal levy provided for by the 89th section.

By the 92nd section, the municipal council of every city, town and village is to "levy and collect upon the taxable property within the municipality in the manner provided in this act and in the municipal and assessment acts, such sums as may be required by the public school trustees for school purposes."

By section 93 the taxable property in a municipality for school purposes, is to include all property liable to municipal taxation and also all property exempted by the council from municipal and not from school taxation.

By the 179th section, in cases where, before the coming into force of the act, catholic school districts had been established, covering the same territory as any protestant school districts, such catholic school districts were upon the coming into force of the act to cease to exist. By the 183rd section, the act was to come into force on the first day of May, 1890.

By the 5th section "all public schools shall be free schools." By the 6th section, "religious exercises in the public schools shall be conducted according to the regulations of the advisory board," with provision for excusing the attendance upon such exercises of any child whose parent or guardian may so desire. By the 8th section, "the public schools shall be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided."

It is shown that on and prior to the 30th April last, a school district which had some years before been established, existed in the city of Winnipeg and that such district was under the direction and management of the corporation known as "The School Trustees for the Catholic School District for Winnipeg, No. 1 in the Province of Manitoba" that this corporation had established and in operation a number of schools in Winnipeg under the provisions of the various provincial statutes relating to schools to one of which the applicant has been in the habit of sending his children for instruction; that this latter school is still continued with the same teaching and religious exercises as previously and the applicant's children still attend it.

While it is to be noted in this connection, that it does not appear under what authority this particular school is now conducted, or whether the teaching and religious exercises referred to are warranted by the regulations, if any, of the advisory board, I do not think that anything turns upon these points. It also appears that on the 28th of April last, there were presented to the clerk of the city of Winnipeg an estimate and requisition in writing, of "The Board of School Trustees for the Protestant School District of Winnipeg, No. 1, in the Province of Manitoba," for the levy and collection by the city council of $75,000 for the school year 1890, accompanied by a list of the names of those liable to be assessed for the support of protestant schools, and that on the 29th of April last, a similar estimate and requisition were submitted on behalf of the "School Trustees of the Winnipeg Catholic School District," for the

levy of $2,550 for the support of their schools for the year 1890, with a list of names of persons liable to assessment for the same. It is shown that these estimates and requisitions were submitted to and approved by the city council, and are those on which the by-laws, in so far as they impose a rate for school purposes are based. It is not contended that if the public schools act is valid and in force it was improper to levy a rate based on these estimates alone.

The contention of the applicant is, that the old law is still in force, and that the amounts of these estimates should have been levied separately upon protestant and Roman catholic rate-payers. The argument for this view is based upon a claim that the public schools act of 1890 is *ultra vires* of the provincial legislature, and that the repeal of the former statutes was intended to operate only for the purpose of substituting the one system for the other, and should be deemed inoperative. It is sufficient however, for present purposes to consider whether it was *intra vires* of the legislature to establish such a system of schools as is provided by the new act, and to authorize the raising of money for their support by a general assessment upon the property of all irrespective of religious belief and without providing for the support of separate schools for any class.

I have referred to the old acts as shortly as possible, rather in order to explain the form of the objection taken in the summons and as illustrative of one system which the applicant contends to have been within the powers of the legislature to establish, than because I can conceive that the adoption at one time of such a system could limit the authority of the legislature thereafter.

By the second section of the statute, usually known as the Manitoba act, 33 Vic., c. 3 D., confirmed by the Imperial act, 34 and 35 Vic., c. 28, the provisions of the British North America act, 1867, "Except those parts thereof which are in terms made, or by reasonable intendment may be held to be specially applicable to, or only to affect one or more, but not the whole of the provinces" then composing the dominion, and except so far as the same might be varied by the Manitoba act itself, were to "be applicable to the province of Manitoba in the same way, and to the like extent as they apply to the several provinces of Canada, and as if the province of Manitoba had been one of the provinces originally united by the said act."

By the British North America act, 1867, section 92, "In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say"..... "(2) Direct taxation within the province in order to the raising of a revenue for provincial purposes" ..... "(8) Municipal institutions in the province." And by section 93, "In and for each province, the legislature may exclusively make laws in relation to education, subject and according to the following provisions: (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province of the union; (2) All the powers, privileges and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the queen's Roman catholic subjects, shall be, and the same are hereby extended to the dissentient schools of the queen's protestant and Roman catholic subjects in Quebec; (3) Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the governor general in council from any act or decision of any provincial authority affecting any right or privilege of the protestant or Roman catholic minority of the queen's subjects in relation to educatlon." A fourth sub-section provides for the enactment by the parliament of Canada, so far as may be necessary, of laws requisite to the carrying out of the decision on such appeal.

By the 22nd section of the Manitoba act, "In and for the province the said legislature" (*i. e.*, the provincial legislature) "may exclusively make laws in relation to education, subject and according to the following provisions: (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union;

(2) An appeal shall lie to the governor general in council from any act or decision of the legislature of the province, or of any provincial authority, affecting any right or privilege of the protestant or Roman catholic minority of the queen's subjects in relation to education." A third sub-section is added similar to sub-section 4 of the 93rd section of the British North America act.

Now it is obvious that if there were merely the authority to legislate in relation to education without the limitations imposed by these sub-sections, it would be quite competent for the provincial legislature to enact such a statute as the public schools act. It is in the sub-sections that the difficulty lies. It appears to me that these sub-sections can only be properly understood by a comparison of them with the corresponding limiting sub-sections of the British North America act, 1867, and by a consideration of the laws of the four original provinces of the dominion, at the time of their union, as well as that of the law and practice with reference to education in this portion of British North America, at the time of its union with Canada. In each of the provinces originally united to form the dominion of Canada, there existed at the union, a system of public schools supported, partly by grants of money by the provincial legislature out of the general funds of the province and partly by direct taxation through municipal bodies or boards of school trustees or commissioners, with, in Lower Canada and New Brunswick, an option to localities to substitute voluntary subscriptions for compulsory taxation. There was, however, this difference, that in Nova Scotia and New Brunswick there was no provision for the support of separate schools for any class in a similar way or for the exemption of any class from liability to be taxed for the support of the general system, as there was in the old province of Canada.

Of the latter province there were, as is well known, two great political divisions, at one time forming separate provinces for which the laws in some respects differed. In Upper Canada, now the province of Ontario, the public schools were regulated by the acts C. S. U. C. cc. 64, 65 with some amendments, the most important of which were contained in the act 26 Vic. c. 5. By the second of these acts, protestants could establish separate schools in school sections in which the teachers of what were called the common schools were Roman catholics, and were then exempted from contributing to the support of the common schools, by sending their children to, or contributing to a certain extent to the support of such separate schools. And by the same act as amended by the third one mentioned, similar provision was made for enabling the Roman catholics in any school section to establish separate schools for themselves, and to become exempt from contributing to the support of the common schools, as long as they should continue to be supporters of such separate schools. For the purposes of these separate schools, protestant or Roman catholic, it was requisite that there should be a certain number of the particular religious faith to initiate the proceedings necessary to the establishment of such separate schools.

In Lower Canada, now the province of Quebec, the public schools were regulated by the act C. S. L. C. c. 15 with some amendments. If the rules and regulations for the government of a common school were not satisfactory to any number of the inhabitants of a municipality professing a religious belief different from that of the majority, these inhabitants could establish dissentient schools under the government of their own trustees and become exempt from taxation for school purposes by any but these trustees where there were such.

Both in Upper and in Lower Canada, the supporters of the separate or dissentient schools were by express enactments entitled to have proportionate shares of provincial moneys granted for the support of common schools, applied in aid of such separate or dissentient schools and to have rates levied for the support of the latter upon those of the appropriate classes respectively.

In Nova Scotia the schools were regulated by the acts R. S. N. S. [3rd series] c. 58; 28 Vic., cc. 28, 29; 29 Vic., c. 30; and in New Brunswick by the act 21 Vic., c. 9; in each case with some subsequent unimportant amendments. Upon the face of the statutes, it is clear that in Nova Scotia these schools were not in any respect denominational in the usual sense of that term. For New Brunswick, any possibility of con-

tention that they were denominational in the sense in which that term is used in the British North America act, 1867, is precluded by the decision of the supreme court of New Brunswick, in *Exparte Renaud*, 1 Pugs. N.B.R., 273; 2 Cartwr. Cas. 445 affirmed on appeal by the judicial committee of the privy council. The reasoning in this case would also seem to apply to the common schools of Upper Canada. In Lower Canada, an element of a denominational character not found in the other provinces, was attached to the common schools in a requirement that the text books relating to religion and morals, were to be chosen by the officiating priest or clergyman of each school section, for use in the schools by children of his religious belief. See C. S. L. C. c. 15, s. 65, ss. 2.

From the judgments in the New Brunswick case referred to, it appears also that at the union there existed in that province, distinctively denominational schools, to which the provincial legislature had from time to time made grants of public moneys. The same was also to some extent the case in Nova Scotia, and I believe in the old province of Canada.

There were then two wholly different sets of circumstances existing in Canada and the maritime provinces when they were united, to which the limitations in the subsections of the 93rd section of the confederation act became applicable. In the former there were what I conceive to have been denominational schools recognized by law, the supporters of which could invoke the authority of the law to maintain them by compulsory assessments upon their co-religionists and could, by so doing, relieve themselves from liability to assessment for the support of the common schools, and were by law entitled to have apportioned to them a share of the provincial funds granted in aid of common schools. Thus there were distinct classes of persons having distinct rights and privileges in respect of denominational schools, among which was that of obtaining immunity from taxation for the support of the common schools. This immunity could well be said to be a right or privilege in respect of denominational schools as being dependent upon the establishment and support of such schools.

In the maritime provinces all could be compelled to contribute to the support of the public schools by direct taxation without reference to religious beliefs or the existence of denominational schools, and there was no recognizable right to have the latter maintained in any way at the public expense or by any system of taxation.

When, however, we come to Manitoba, we are met at the outset by the difficulty that there was no public school system supported by public funds or by any mode of taxation. The existence of such in the other provinces served to determine whether there was a right to immunity from such taxation or not. Here, that indication is wholly wanting.

The position of affairs with reference to education in the territory constituting the province of Manitoba at the time of its union with Canada, is distinctly stated by his grace the archbishop of St. Boniface in an affidavit filed in support of the motion as follows: "2. Prior to the passage of the act of the dominion of Canada passed in the thirty-third year of the reign of her majesty Queen Victoria, chapter three, known as the Manitoba act, and prior to the order in council issued in pursuance thereof, there existed in the territory now constituting the province of Manitoba, a number of effective schools for children. 3. These schools were denominational schools, some of them being regulated and controlled by the Roman catholic church and others by various protestant denominations. 4. The means necessary for the support of the Roman catholic schools were supplied to some extent by school fees paid by some of the parents of the children who attended the schools and the rest was paid out of the funds of the church contributed by its members. 5. During the period referred to, Roman catholics had no interest in, or control over, the schools of the protestant denominations, and the members of the protestant denominations had no interest in, or control over, the schools of the Roman catholics. There were no public schools in the sense of state schools. The members of the Roman catholic church supported the schools of their own church for the benefit of Roman catholic children and were not under obligation to, and did not contribute to the support of any other schools. 6. In the matter of education, therefore, during the period referred to, Roman catholics were, as a matter of custom and practice, separate from the rest of the community and their schools were all conducted according to the distinctive views and beliefs of Roman catholics as herein set forth."

And in two affidavits filed in opposition to the motion it is stated, "That schools which existed prior to the province of Manitoba entering confederation, were purely private schools, and were not in any way subject to public control, nor did they in any way receive public support. No school taxes were collected by any authority prior to Manitoba entering confederation, and there were no means by which any person could be forced by law to support any of said private schools."

While, then, these supplement to some extent, the affidavit of his grace, they are in no way inconsistent with it, and taken altogether the affidavits show with sufficient clearness, the state of affairs with reference to which the 22nd section of the Manitoba act must be construed.

Now that section differs from the corresponding section of the original confederation act in four particulars; first, in the insertion in the first sub-section of the words "or practice" to which so much importance has been attached in argument; secondly, in the omission of any clause corresponding to the second sub-section of the original act; thirdly, in the extension of the right to appeal to the governor general in council to acts or decisions of the provincial legislature; and fourthly, in the right of appeal being given absolutely and not conditionally upon the previous existence or subsequent establishment of a system of separate or dissentient schools.

And here, I must say with reference to an argument that the third sub-section of the 93rd section of the original act is one applicable to the whole of the provinces of the dominion, and therefore, by the terms of the second section of the Manitoba act, to be read into the latter act, in addition to the 22nd section of the latter, that this 22nd section gives power to the legislature to make laws in relation to education, subject and according to certain provisions, and that if the reading into the act of any portion of the original 93rd section, would involve either an extension or a limitation of the powers of the provincial legislature beyond those fixed by the terms of this 22nd section, there would be an inconsistency with the Manitoba act, which is excluded by the express terms of its second section. The course of the legislation and the meaning of the first statute, are of the greatest importance in interpreting the second, but I cannot consider any portion of the 93rd section of the former to be incorporated into the second act.

The first question naturally arising is, as to whether the public schools act itself, creates a system of denominational schools, or assumes to compel any class to support denominational schools other than their own. Upon the face of the statute it does not. The affidavit of his grace the archbishop, however, appears to be intended to lay a foundation for an argument, that what are called in this act "public schools," are really schools of a protestant denominational character, although the act upon its face declares that they are to be unsectarian.

After setting forth the importance which Roman catholics attach to the combination of religious with secular instruction, the use of religious exercises in schools; the supervision of the church over the schools; training of their children in the doctrines and faith of their church; the appointment of teachers who are not only members of that church, but also thoroughly imbued with its principles and faith and who recognize its spiritual authority and conform to its direction and the use of a certain class of text books, he goes on to say, that the church regards the schools provided for by "the public schools act" "as unfit for the purpose of educating their children and the children of Roman catholic parents will not attend such schools, 'but that' protestants are satisfied with the system of education provided for by the said act" and "are perfectly willing to send their children to the schools established and provided for by the said act" that "such schools are in fact, similar in all respects, to the schools maintained by the protestants under the legislation in force immediately prior to the passage of the said act." He then proceeds: "The main and fundamental difference between protestants and Roman catholics with reference to education is, that while many protestants would like education to be of a more distinctly religious character than that provided for by the said act, yet they are content with that which is so provided and have no conscientious scruples against such a system; the catholics, on the other hand, insist upon education being thoroughly permeated with religion and religious aspects."

In so far as there is any material in reply to this affidavit, it does not appear to be contradicted. Indeed, it seems rather to be supported upon material points as regards the adherents of the presbyterian church by the affidavit of the Rev. Dr. Bryce.

Here, however, I cannot conceive myself to be bound by, or confined to affidavit evidence. I am interpreting statutes and in so doing, I am at liberty to take judicial notice of the circumstances with respect to which they are to be construed. I do not say this because I conceive that there is anything really untrue or intended to mislead or to give a false colouring to beliefs in any of the affidavits. Indeed they appear to me to offer in most respects a very fair view of the relative attitudes of most protestants on the one side, and most Roman catholics and the Roman catholic church as a body on the other side. I am not, however, convinced that there is any such distinctive difference between protestants generally and Roman catholics generally upon this question, as to constitute a mark of denominational division and to make what would ordinarily be termed non-denominational schools, really "denominational" within the meaning of the Manitoba act as between protestants and Roman catholics.

From my experience I would say that very many protestants have as strong opinions upon the importance of combining religious with secular instruction as any Roman catholics. In support of this view, I need only refer to the report of the royal commission, appointed in 1886, to enquire into the working of the elementary education act in England and Wales.

The difficulty lies in arriving at any agreement upon the nature and extent of the religious training and in securing that it shall be satisfactorily conducted.

To insure the latter, most Roman catholics and very many protestants desire to have the education of the young conducted in denominational schools under the control of those connected with their respective churches. The evidence of this is found in the existence and maintenance of just such denominational schools wholly apart from institutions of a collegiate character to which reference was made in *Exparte Renaud* and which are maintained by protestants and attended by children of protestants in all parts of Canada as elsewhere.

The question whether wholly, or how far the public schools should be devoted to secular training, is a grave one, upon which I have not now to express an opinion, but it is impossible not to see that there is much reason to believe that the non-sectarian system tends to the exclusion from the schools, of the religious instruction, to which so many naturally attach the greatest importance; or to make the religious exercises and training conform to the views of the majority in the state. But if the school authorities act improperly, or without proper judgment, religious exercises and training as offensive to many protestants as to any Roman catholics, may find their way into the schools.

The controversy is an old one, and its whole history appears to show that it is one between denominational and non-denominational schools, and that those established under the public schools act, are not denominational in the sense of that controversy, or of the Manitoba act, or the British North America act, 1867, which must be deemed to speak with reference to that controversy.

These views are supported by the judgment in the New Brunswick case before referred to, the arguments in which I shall not now delay to repeat. I am not aware of the existence of any extended report of the opinions of the judicial committee of the privy council in that case. The only reference to the appeal that I have seen, is that found in 2 Cartwr. Cas. on the B. N. A. act at page 486, which purports to have been taken from the *London Times*, of the 18th of July, 1874, and which states merely that "Lord Justice James after conferring with the other members of the committee gave judgment without calling upon the respondents," and that "their lordships concurred in the opinions of the court below, and would advise her majesty that the appeal be dismissed with costs."

Now the rights and privileges protected by the first sub-section are those with respect to denominational schools which some class or classes of persons had before the union.

I have shown how it may be said that the right to obtain immunity from taxation for the support of the common schools, in the old province of Canada, could be said to

be a right or privilege with respect to denominational schools, and to have been possessed by classes of persons. It is to be noticed that it was enjoyed, not as directly dependent upon belief in denominational schools as the only proper system, or upon support of any but the state system of separate or dissentient schools, and only if such should be established and kept up, which, if there were not sufficient of the requisite religious views or desirous of maintaining them could not by law be done in Upper Canada or in practice in either portion of the province.

But under the state of affairs existing here before the union with Canada, there was simply an absence of any law requiring any person to contribute to the support of schools. It was not dependent upon or connected with denominational schools, and cannot be said to have been either by law or practice a right or privilege with respect to denominational schools.

But it is necessary to consider whether the public schools act in consequence of its effect upon denominational schools themselves or the practice of establishing, maintaining and having their children educated in denominational schools which is shown to have been exercised by certain classes before the union, prejudicially affects any right or privilege in respect of such schools which these classes had at the union.

The act in no way prohibits attendance upon or the maintenance of denominational schools or attempts to make attendance upon the public schools compulsory; it is, however, suggested that the act prejudicially affects such rights or privileges in two ways. First, by establishing in competition with the denominational schools, a system of free schools supported by the public funds, and thereby placing the denominational schools at a great disadvantage, and secondly, by withdrawing from the hands of those who would be desirous of supporting denominational schools, funds which they would otherwise devote to that purpose.

While in practice, the denominational schools existing before the union, were not subject to the competition referred to, it was quite competent for any person or persons desirous of doing so, to establish and maintain non-denominational schools free or otherwise. By right or privilege, I cannot conceive that mere absence, in fact, of something which would render another thing less valuable is meant. The argument is really a plea for the monopoly of educational privileges by certain institutions or bodies or by institutions or bodies of a certain character. To such a monopoly there was no recognized right or privilege, either by law or practice. If there was no right to be free from competition there was none such to be free from the competition of free schools or of those supported by the state. The circumstances existing in the older provinces and the general nature of the school systems in America, suggest at once that it must have been contemplated in the enactment of the Manitoba act that the legislature of Manitoba should be at liberty to establish a system of free non-denominational public schools, and provide for their support by grants of provincial funds or direct taxation or by both methods. Under the powers given, it would be open to the legislature to make laws to encourage or to restrict education, provided the protected rights and privileges were not prejudicially affected, but we may well assume that encouragement rather than restriction would be anticipated. Certainly it was intended to be open to the legislature to determine in its wisdom that popular ignorance is an evil, and to seek to guard against such by providing for all, at the public expense, free secular education of such character as to it should seem proper. It may be that the opportunities thus offered would naturally draw to the public schools, pupils who would otherwise attend denominational schools and contribute to the support of the latter and thus enable those in charge of the latter to maintain them at a higher degree of efficiency. It may be, on the other hand, that the competition would only stimulate the supporters of denominational schools to greater exertions and insure a higher standard in such schools; in either view, however, the effect would be an indirect one, and it would rather be an effect upon the schools themselves and their supporters than upon any right or privilege with respect to such schools. It does not appear to me that in the non-existence before the union of competition of that character there can be recognized a right or privilege with respect to denominational schools, existing either by law or by practice.

It was, as I think, beyond question that it was intended that the legislature should be able to make laws for providing against popular ignorance as being an evil, and to authorize the incurring of expense for the purpose, and the levying of taxes to meet such expense as upon any other subject within its powers. I am unable, therefore, to regard the circumstance that in some cases the expense thus occasioned to individuals may render them less able or less willing to contribute to the support of denominational schools, as showing that the legislation prejudicially affects a right or privilege in respect of such schools. The effect is so indirect and remote that I cannot take it to be within the act, and it is precisely the same effect that would be produced by taxation for other purposes within the powers of the legislature.

It is, however, urged that even though the natural meaning of the language of the statutes would lead to such conclusions as these, the history of the controversy respecting separate or denominational schools in the other provinces and elsewhere, and the mode in which it was settled for the other provinces by the original confederation act, and the changes made in the wording of the Manitoba act, show that it was intended that a more enlarged view of the protected rights and privileges should be taken.

Now in the first place, it is not correct as claimed, that the original Act assumed to settle the question for Canada; it merely guarded rights and privileges already given in each province. In Nova Scotia and New Brunswick, the question still remains an open one. There was, then, no intention under the original act, that the question should be settled for Canada generally in favour of the immunity of any class from taxation for the support of non-denominational public schools, excepting so far as such immunity had previously existed by law.

Counsel for the applicant forget that the question has two sides, and that there are many who deem it more for the interest of the state to encourage only one system of schools, and that the definite settlement of such an important question ought naturally to be expressed in clear language. It was evidently considered that the rights of minorities in Lower Canada should be extended or at any rate more distinctly preserved so as to be securely placed upon the same basis in Ontario and Quebec. When, therefore, parliament intended to settle what had not previously been settled, or which it feared had not previously been settled, it did so.

While the older provinces had had before the union, their own legislatures, representative of popular opinion to settle this question for them, none such had existed here, and it is difficult to believe without clear evidence that parliament had considered, and settled the matter, that parliament would have desired to preclude this portion of Canada from considering this question for itself. The language of the British North America act was sufficiently definite, having reference to the express legislation of the previous provinces, but with no express law here to which reference could be made, it was certainly as important as in the case of Quebec, to make the position clear if it was to be as the applicant contends.

I attach very little importance to the words "or practice" as definitely showing any such intention. The position of affairs here before the union was anomalous. Both the extent of the territorial jurisdiction of the Hudson's Bay Company and the nature of its authority had been regarded as very doubtful. Its government was recognized, however, as being the *de facto* one, and the Manitoba act shows in other parts, the intention to recognize what had been regarded as rights under the old regime irrespective of strict law. Under such circumstances, the introduction of the words was quite natural and I cannot take them as adding to the ordinary sense of the whole enactment. The change in the second sub-section from the language of the third sub-section of the 93rd section of the original act appears to me, infinitely more important. In the original act the appeal to the governor general in Council was given only in provinces in which there had existed, prior to the union, a system of separate or dissentient schools, or in which such should afterwards be established. In the case of Manitoba it was given absolutely which may be claimed to show that parliament contemplated that practically such a system had existed here before the union, or was at any rate secured by the first sub-section in connection with any system of public schools which might be established

by the legislature. It would be natural too, if this were the idea existing, that an appeal should have been given from an act of the legislature as well as from an act or decision of a provincial authority.

Now I must confess that I have not accounted satisfactorily to my own mind for this change of language. Little attention was paid to this sub-section upon the argument, and no suggestion was distinctly made upon it. Probably before the main question can be considered finally settled, or upon some appeal under the sub-section, a view may be suggested which will at once appear to be the true one. At present I can only suggest the alternative one, that it came about for much the same considerations as the introduction of the words "or practice." It may well have been felt that in view of the undetermined position of affairs, and of the absence of clear and express legislation to which reference could be made, it was advisable that the right of appeal should be more extended than in the case of the other provinces, and this appears to me to be the more reasonable and probable explanation. Now before the union, several classes of persons exercised the privilege of maintaining denominational schools in the territory now forming this province, of having their children educated in them, and of having inculcated therein the peculiar doctrines of their respective denominations. History teaches us that bigotry has frequently denied to minorities the exercise of some or all of these privileges. The right to continue their exercise is no unimportant one. Nay, if these privileges were attacked, they would soon appear of infinitely greater importance than the liability to pay taxes for the support of free non-sectarian public schools for the benefit of those choosing to take advantage of them. Taking then, the language of the union acts in its natural sense, important rights and privileges are guarded. It is not necessary to go beyond their natural meaning in order to give effect to any of the language used. I take the question here raised to be merely that of the liability of all property holders to be subjected to equal taxation for the support of free non-sectarian public schools which may be used by such as choose. The right to immunity from such taxation was not, under the original confederation act, generally established throughout Canada in favour of any class or classes; and if intended to be established here, one would have expected this to be indicated by more distinct language than is found in the Manitoba act. Such immunity was general here before the union and not in any way existing in respect of denominational schools, or in favour of any class or classes: the denominational schools did ~~not, by~~ law or practice, enjoy any recognized right or privilege to be kept free from any kind of competition.

The burden is naturally upon those who seek to limit the power of the legislature to choose from time to time, as circumstances change, between a sectarian and a non-sectarian system of public school education, or its exercise of the sovereign power of taxation in order to afford education free, if it thinks it necessary or advisable in the interests of the province, to any greater extent than is naturally involved in the language of the constitution. I am unable, therefore, to hold that the public schools act, if enacted at the outset of the union, would have been *ultra vires* in establishing this new system of schools and in authorizing the taxation complained of, without establishing or providing for the support of separate schools for any class. I think that it was quite competent for the legislature to abolish the system of separate schools, which it had established, and leave parties to recur to their voluntary denominational schools if they saw fit. That they will do so, his grace the archbishop states. In so doing, he practically admits that they are at liberty to revert to the system existing before the union, though he claims that they will do so under certain disadvantages, the indirect causing of which, by the adoption of the new system, I cannot consider to be within the saving clauses of the constitution.

Whether this be done, or whether Roman catholics submit wholly or partially, with heart burnings and dissatisfaction, to the new system of public schools, it is for the legislature and not for the courts to determine whether there can be such grave reasons of state as to warrant a disregard of the complaints of the minority. On the one hand it has the example of other legislatures to show that it is not alone in deeming the reasons sufficient. On the other, many will doubt whether human wisdom is so far, infallible as to warrant absolute reliance upon the sufficiency of these reasons.

I can merely repeat the language of the learned chief justice of New Brunswick, now the chief justice of Canada: "It may be a very great hardship that a large class of persons should be compelled to contribute to the support of schools to which they are conscientiously opposed or be shut out from what they have hitherto, under certain circumstances enjoyed, and be without remedy, but, by any such considerations, courts of justice ought not to be influenced; hard cases, it has been repeatedly said, make bad law, and it has also been justly remarked that if there is a general hardship affecting a general class of persons, it is a consideration for the legislature, not for a court of justice."

The summons must be dismissed with costs.

In the Queen's Bench.

In the matter of an application to quash by-laws 480 and 483 of the city of Winnipeg.

Required that this matter be entered upon the list of causes, matters and proceedings for hearing by the court in banc upon the application of John Kelly Barrett, by way of motion to reverse the order or decision of Mr. Justice Killam, pronounced herein on the twenty-fourth day of November instant, dismissing with costs the summons granted herein on the seventh day of October, 1890, to quash the by-laws above referred to.

The applicant complains of the whole of the said order and desires that the same should be reversed with costs, and that the said summons should be made absolute with costs, upon the grounds among others set forth in the said summons.

Dated this twenty-seventh day of November, A.D. 1890.

GERALD F. BROPHY, *Attorney for the Applicant.*

To the Prothonotary of the Court of Queen's Bench.

JUDGMENTS IN TERM.

TAYLOR, C.J.

The application to quash these by-laws raises the important question, whether the public schools act, 53 Vic., c. 38 (M. 1890), is one within the power of the legislature of this province to pass. It came in the first instance before my brother Killam, who, in a considered judgment upheld the validity of the act, and dismissed the summons. From his decision an appeal was taken, which has now to be disposed of.

The by-law no. 480, dated 14th July, 1890, provides for levying by assessment the amount required for the municipal and school purposes of the city of Winnipeg, for the current municipal year 1890. By-law no. 483, dated 28th July, 1890, amends the former by-law in several respects. Under these two by-laws a rate of two cents on the dollar is to be raised, levied and collected on the whole assessed value of the real and personal property in the city of Winnipeg, the proportion required for school purposes being four and one-fifth mills on the dollar.

The only ground specifically stated in the original summons as that on which it is sought to quash these by-laws is, "Because by the said by-laws the amounts to be levied for school purposes for the protestant and catholic schools are united, and one rate levied upon protestants and Roman catholics alike for the whole sum." There is no question raised that the assessment in the manner provided for by these by-laws is not in accordance with the provisions of the public schools act.

It is claimed that the school law in force in the province before the passing of that act, and which it professes to repeal, is still in force. Under that earlier law there was one board of education, which for certain purposes acted as a united board, but which was also divided into two sections, a protestant section consisting of all the protestant members, and a Roman catholic section, consisting of the Roman catholic members. The school districts throughout the province were divided into protestant and catholic. The

protestant schools were under the control of the protestant section of the board, and the trustees of these schools were elected by the protestant ratepayers. The Roman catholic section of the board had in like manner entire control of the catholic schools, and the catholic ratepayers elected the trustees. There was also one superintendent of education for the protestant schools, and another for the catholic schools. The law also provided for levying the taxes for the support of schools in protestant school districts, upon the property of protestants alone, and in Roman catholic school districts upon Roman catholics only. Provision was also made for apportioning taxes derived from the property of corporations, or of persons who could not be considered to belong to either body. The grant made annually by the legislature for educational purposes was apportioned between the two sections of the board, for distribution among the schools under the charge of each respectively.

The objection to the public schools act is, that it is not one within the power of the provincial legislature to pass, having regard to the limitations upon their power of legislating on the subject of education, imposed by sec. 22 of the Manitoba act, 33 Vic., c. 3 (D., 1890).

That section is as follows:—"In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions: (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union; (2) An appeal shall lie to the governor general in council from any act or decision of the legislature of the province, or of any provincial authority, affecting any right or privilege of the protestant or Roman catholic minority of the queen's subjects in relation to education; (3) In case any provincial law, as from time to time seems to the governor general in council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the governor general in council, on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section, or of any decision of the governor general in council under this section."

A section similar in character is found in the British North America act, as section 93. There are differences between the two sections, and when parliament, in the Manitoba act, used different language, it must be assumed that there was some definite intention in doing so. The differences between the two sections are the following:—Sub-section 1 of section 93, speaks of any right or privilege as to denominational schools which "any class of persons have by law in the province at the union," while in sub-section 1 of section 22, the right or privilege is spoken of as that which "any class of persons have by law or practice." Section 93 has as sub-section 2, a clause relating solely to the provinces of Ontario and Quebec which does not appear in section 22. In sub-section 3 of section 93, the words, "Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province," are found immediately before what appears in section 22 as sub-section 4. Then sub-section 3 of section 93, provides for an appeal to the governor general in council only from any act or decision of any provincial authority, while sub-section 2 of section 22, says that an appeal shall lie "from any act or decision of the legislature of the province or of any provincial authority." Sub-section 4, section 93, is the same as sub-section 3 of section 22, there being no change in the language.

Possibly, there is no practical difference in the effect of the changed language in sub-section 2, as to an appeal from an act or decision of the legislature as well as from an act or decision of any provincial authority. At all events in *Board of Trustees of the Separate Schools of Belleville vs. Grainger*, 25 Gr. 570, Blake, V.C., seems to have been of opinion that, "act of any provincial authority" used in section 93 would include an act of the provincial legislature.

It is under section 22 of the Manitoba act that the question raised in the present case must be considered, and the decision of it must be governed by the provisions of

that section. By section 2 of the Manitoba act the provisions of the British North America act are made applicable to the province of Manitoba, "except those parts thereof which are in terms made, or by reasonable intendment may be held to be, specially applicable to, or to affect only one or more, but not the whole of the provinces now comprising the dominion, and except so far as the same may be varied by this act." As section 93 does not profess to settle the question of education, and of separate or denominational schools for the whole dominion, but only for the provinces of Ontario and Quebec, and the question of education in the newly formed province of Manitoba is dealt with specially and in somewhat varied language, there can be no doubt that section 93 is not the one which must govern the decision in this case. As, however, section 22 was undoubtedly based on section 93, the terms of the latter are material, but only in so far as they may afford assistance in arriving at the true construction to be placed on the section of the Manitoba act.

It was argued that when considering the meaning and intent of section 22, and applying its language, regard must be had to the condition of things existing in Upper Canada as to separate schools before confederation, and which led to section 93 finding a place in the British North America act. It is said that in construing an act, its history must be considered, and that statutes *in pari materia*, must be construed together, the construction of one applied to the other. Now, there is no doubt that the history of an act may be enquired into and considered by the court, where difficulty is found in construing it. The court must look not only at the words of the statute, but to the cause of making it, to ascertain the intent. *The King* v. *East Teignmouth*, 1 B & Ad., 249. Or, as it was expressed by Sir George Jessel in *Holme* v. *Guy*, 5 Ch., D. 905, "The court is not to be oblivious * * * * of the history of law or legislation. Although the court is not at liberty to construe an act of parliament by the motives which influenced the legislature yet when the history of law and legislation tells the court, and prior judgments tell this present court, what the object of the legislature was, the court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view of finding out what it means, and not with a view of extending it to something that was not intended." As Bramwell, B., said in *Attorney General* v. *Sillem*, 2 H. & C., 531, "so perhaps, history may be referred to, to show what facts existed, bringing about a statute, and what matters influenced men's minds when it was made."

Previous statutes, *in pari materia*, may and ought to be looked at, when there are earlier acts relating to the same subject, the survey must extend to them, for all are for the purposes of construction considered as forming one homogeneous and consistent body of law, and each of them may explain and elucidate every other part of the common system to which it belongs. *Rex* v. *Loxdale*, 1 Burr, 445; *Duck* v. *Addington*, 4 T. R. 447; *Mosley* v. *Stonehouse*, 7 East, 174.

In many cases the courts have taken great liberties with the wording of statutes, in order to effect what they believed to be the intention of parliament. In *Caledonian Rail. Co.*, v. *North British Rail. Co.*, 6 App., Ca. 122, Lord Selborne said "The more literal construction ought not to prevail if it is opposed to the intention of the legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effected." And the court of appeal held in *Exparte Walton*, 17 Ch., D. 746, that a statute may be construed contrary to its literal meaning when a literal construction would result in an absurdity or inconsistency, and the words are susceptible of another construction which will carry out the manifest intention.

All this is old law and was stated more than three hundred years ago in *Stradling* v. *Morgan*, Plowd. 199. "The judges of the law in all times past have so far pursued the intent of the makers of statutes, that they have expounded acts which were general in words to be but particular, where the intent was particular." Then after referring to several cases the report proceeds, "From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance; and those statutes which comprehend all things in the letter they have expounded to

extend to but some things; and those which generally prohibit people from doing such an act, they have interpreted to permit some people to do it, and those which include every person in the letter, they have adjudged to reach some persons only; which expositions have always been founded upon the intent of the legislature, which they have collected sometimes by comparing one part of the act with another, and sometimes by foreign circumstances, so that they have ever been guided by the intent of the Legislature which they have always taken according to the necessity of the matter, and that which is consonant to reason and good discretion."

The eminent American jurist Chancellor Kent, has said in his Commentaries at p. 462, "The reason and intention of the lawgiver will control the strict letter of the law, when the letter would lead to palpable injustice, contradiction and absurdity." The intention of the legislature is what ought to govern, and the object of the court must always be to ascertain what that intention is.

But after all, how is the intention of the legislature, the true meaning of a statute to be ascertained? The eminent jurist whose words have just been quoted says: "The true meaning of the statute is generally and properly to be sought from the body of the act itself." These extraneous helps in construing a statute seem resorted to when there is something doubtful in the wording of it; where the words are susceptible of more than one meaning, or where the language used is such as to raise difficulties in its grammatical construction. Thus in *Hollingworth* v. *Palmer*, 4 Ex. 282, Parke B, dealing with a particular section of an act, said, "This section is certainly most incorrectly worded, and it is, therefore, necessary to modify its language in order to give it a reasonable construction. The rule we have always followed of late years is to construe statutes, like all other written instruments, according to the ordinary grammatical sense of the words used, and if they appear contrary to or irreconcilable with the expressed intention of the legislature, or involve any absurdity or inconsistency in their provision they must be modified so as to obviate that inconvenience, but no further." And Bramwell, B. when using the language already quoted in *Attorney-General* v. *Sillem*, was speaking of statutes of doubtful meaning, for he said, "In this, as in other cases of doubtful meaning, it is legitimate to solve that doubt by ascertaining the general scope and object of the enactment. * * * It may be a legitimate mode of determining the meaning of a doubtful document to place those who have to expound it in the situation of those who made it." So Lord Wensleydale said in *Philpott* v. *St. George's Hospital*, 6 H. L. 366, "We ought to look to the words of the statute, and to give these words their natural and ordinary meaning." The proper mode of construing an important statute was considered by all the common law judges of England when called in to advise the house of lords in the *Sussex Peerage Case*, 11 Cl. & F. 143. Their unanimous opinion was delivered by C. J. Tindale. "The only rule for the construction of acts of parliament is that they should be construed according to the intent of parliament which passed the act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid the ground or cause of making the statute, and to have recourse to the preamble which, according to C. J. Dyer, is a key to open the mind of the makers of the act, and the mischiefs which they intended to redress."

I have spoken of how the intention and meaning of the legislature is to be ascertained, but the question for an interpreter of a statute is not, properly, what the legislature meant, but what its language means. *Palmer* v. *Thatcher*, 3 Q. B. D. 353. Or, as the present lord chief justice of England said his course always is, to suppose that parliament meant, what parliament has clearly said, and not to limit plain words in an act of parliament by considerations of policy, *Coxhead* v. *Mullis*, 3 C. P. D., 442.

In the present case I do not see what assistance in answering the questions which arise here is to be got from an enquiry into the history of section 93 of the British North America act, or of the corresponding clause in the Manitoba act. Before confederation

there were in Ontario separate or dissentient schools in existence under an act of the parliament of Canada. The legislature which established these schools could at any time have put an end to them, and there can be no doubt the statesmen who framed the scheme of confederation intended by the provision in the British North America act, to secure that the provincial legislature, the body thereafter to deal with educational matters in Ontario, should not change the then existing state of things, but that it should be for ever continued. They also provided that all the powers, privileges and duties which were then conferred and imposed by law in Upper Canada on the separate schools and school trustees of Roman catholics should be extended to the dissentient schools of protestants or Roman catholics in Quebec. No provision was made for the provinces of Nova Scotia and New Brunswick in which at that time no separate schools existed by law. It cannot, therefore, be said that by this section 93, it was intended to settle for ever the question of separate schools in the dominion, for, if so, why was all mention of these two provinces omitted.

The argument was pressed that, by section 22 of the Manitoba act, parliament, in view of the controversy over separate schools in Ontario, could only have intended to secure for the Roman catholics of Manitoba the same rights and privileges as to separate schools which were by the British North America act secured for Ontario and Quebec. I cannot, however, see that parliament intended more than is expressed by the language used. It must be assumed that when the act came to be passed, parliament knew there were not at that time in the territory being organized as the province of Manitoba any separate or denominational schools existing by law. The act therefore says that, rights or privileges with respect to denominational schools which any class of persons had by law or practice, should not be prejudicially affected by future provincial legislation. The intention of parliament is plain, no future provincial legislation is to prejudicially affect any right or privilege as to denominational schools, if any such right or privilege exists, and whatever it may be. What the parliament intended is not at all doubtful, although, perhaps, it is not so easy to say what exact meaning should be attached to the language used. Surely, had it been intended to secure to Roman catholics, or to any other class of persons in Manitoba, the same right of having separate schools, as is provided for in the province of Ontario, parliament would have said so. Parliament had before it the express provisions of the British North America act, on this subject, and would, I think, most certainly have followed that act had the intention been to settle the matter as that act settled it for Ontario and Quebec. The inference which it seems to me should be drawn from the altered form of the section rather is, that Parliament intended that as the people of the older provinces had settled this question for themselves, so it should be left for the people of the province, then being formed, to settle it for themselves. While so leaving it parliament naturally inserted a provision to secure that existing rights and privileges, whatever these might be, should not be disturbed by the settlement they might make.

What the court has to deal with is, did any such right or privilege exist, and, if so, has such right or privilege been prejudicially affected by the public schools act ?

The parts of section 22, which are of importance are, the section and first sub-section : "In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions: (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons may have by law or practice in the province at the union."

It may be remarked here that when the court in New Brunswick dealt in *re* Renaud, 1 Pugs. N.B.R. 273, with the same words in section 93 of the British North America act, they held that they were not intended to distinguish between protestant and Roman catholics. It was held in the judgment delivered by the learned chief justice, now chief justice of the supreme court of Canada, that sub-section one meant just what it expresses, that "any," that is every "class of persons" having any right or privilege with respect to denominational schools, whether such class should be one of the numerous denominations of protestants or Roman catholics, should be protected in such rights. As the

judgment of the court in New Brunswick was affirmed on appeal by the judicial committee of the privy council, approving of the reasons given in the court below, it must be assumed that this was regarded by the ultimate court of appeal as the true construction of the sub-section.

Are then the members of the Roman catholic church in Manitoba a class of persons who had at the time of the union, by law or practice, any right or privilege with respect to denominational schools? And if so, does the public schools act prejudicially affect any such right or privilege?

Happily there is no dispute as to the facts, as to the state of affairs with reference to education, existing at the time of the union and upon which the claim to possess certain rights and privileges is based.

In an affidavit made by the archbishop of St. Boniface, and filed in support of the application, his grace says that, prior to the passing of the Manitoba act, "There existed in the territory now constituting the province of Manitoba a number of effective schools for children; (3) These schools were denominational schools, some of them being regulated and controlled by the Roman catholic church, others by various protestant denominations; (4) The means necessary for the support of the Roman catholic schools were supplied to some extent by school fees paid by some of the parents of the children who attended the schools, and the rest was paid out of the funds of the church, contributed by its members; (5) During the period referred to Roman catholics had no interest in or control over the schools of the protestant denominations, and the members of the protestant denominationshad no interest in or control over the schools of Roman catholics. There were no public schools in the sense of state schools. The members of the Roman catholic church supported the schools of their own church for the benefit of Roman catholic children, and were not under obligation to, and did not contribute to the support of any other schools; (6) In the matter of education, therefore, during the period referred to, Roman catholics were, as a matter of custom and practice, separate from the rest of the community, and their schools were all conducted according to the distinctive views and beliefs of Roman catholics as herein set forth." In answer to the application, two affidavits were filed, made by Alexander Polson and John Sutherland, residents of the province for fifty years, and these are in no way inconsistent with the affidavit of his grace the archbishop. In each of them it is stated, "That schools which existed prior to the province of Manitoba entering confederation were purely private schools, and were not in any way subject to public control, nor did they in any way receive public support. No school taxes were collected by any authority prior to the province of Manitoba entering confederation, and there were no means by which any person could be forced by law to support any of said private schools. I think the only public revenue of any kind then collected was the customs duty, usually four per cent."

Had Roman catholics, as a class of persons, what can be considered or called rights and privileges within the ordinary meaning of these words as used in the act? There were schools established and carried on, the expense of which was defrayed by Roman catholics. Episcopalians and presbyterians had the same right and also carried on and defrayed the expense of schools. Every other protestant denomination had the same right, and so had every private individual. Any man could establish and carry on a school at his own expense if he chose to do so.

It seems to me the utmost the Roman catholics can be said to have had, was what may be called a moral right. Had the words "right or privilege" stood alone in the act, it could not, I think, be said they had any, which is prejudicially affected by the public schools act.

"A right" is in the *Imperial Dictionary* defined to be, "A just claim, or that to which one has a just claim; that which may be lawfully claimed of any other person * * * In law, that which the law directs, a liberty of doing or possessing something consistently with law." In *Bouvier's Law Dictionary* it is said to be "The correlative of duty, for whenever one has a right due to him, some other must owe him a duty." And in *Browne's Law Dictionary*, it is said to be, "A lawful title or claim to anything."

Wharton's Law Lexicon defines, "Right" as "a liberty of doing or possessing something consistently with law."

In the *Imperial Dictionary* "privilege" is defined as, "a right, immunity, benefit, or advantage enjoyed by a person or body of persons beyond the common advantages of other individuals, the enjoyment of some desirable right, or an exemption from some evil or burden; a private or personal favour enjoyed; a peculiar advantage." It is defined by *Webster* as "a right or immunity not enjoyed by others or by all." In *Bacon's Abr.*, vol. 8, p. 158, privilege is said to be "An exemption from some duty, burden, or attendance with which certain persons are indulged. * * * A particular disposition of the law which grants special prerogatives to some persons contrary to common right." *Comyn's Dig.*, says, "*Privilegium est jus singulare, seu lex privata, quæ uni homini vel loco conceditur.*" So, in *Mackeldy's Roman Law*, section 189, it is said, "Privilege in its general sense, denotes every peculiar right or favour granted by the law contrary to the common rule," and in section 190, "The privileged party may exercise it to its full extent and nobody is allowed to disturb him in doing so, hence he has a right to prohibit any other person who is not in the enjoyment of a similar privilege from assuming the same right."

In *Campbell* v. *Spottiswoode*, 3 B. & S. 769, the court had before it a case of newspaper libel, which it was claimed for the defence was a privileged communication. Crompton, J., dealing with this, spoke of what is a privileged communication in this way: "That is where from the particular circumstances or position in which a person is placed there is a legal or social duty in the nature of a privilege or peculiar right, as opposed to the rights possessed by the community at large." And Blackburn, J., said, "the meaning of the word is, that a person stands in such a relation to the facts of the case that he is justified in saying or writing what would be slanderous or libellous in any one else."

It seems then that rights and privileges, as used in the statute, must mean something special and peculiar, something not common to all the community. To be protected, they must be such as the class of persons seeking protection had, apart from the rest of the community, must be such as they possessed and others did not. That is the construction put upon the words by the court of queen's bench in England, in *Fearon* v. *Mitchell*, L. R. 7 Q. B. 690. Mitchell put up a building on plans submitted to, and approved by the local board, in which, for a number of years, he carried on an extensive business, selling cattle and sheep by auction. The board then set up a public market in the town, and laid an information against him to recover a penalty for selling at his own place and not in the public market, articles on which a toll was by the act authorized to be levied. The justices stated a case for the opinion of the court. On the argument, one ground of defence relied on was a proviso in the act, "no market shall be established in pursuance of this section, so as to interfere with any rights, powers or privileges enjoyed within the district by any person, without his consent." The argument was, that Mitchell's premises were built under the express sanction of the local board, with a knowledge of the purpose for which they were to be used, and that by carrying on his business there for years, he had acquired rights, powers and privileges which were protected by that proviso. Cockburn, C. J., dealt with that argument thus: "this right which the respondent was enjoying at the time when this market-place was built was not, I think, a right within the meaning of the section. It was a right which he enjoyed only in common with the rest of her majesty's subjects. He had no exclusive right to carry on this business, and he had no greater right than anybody else with suitable premises, for setting up and carrying on a similar business. The word "right," especially when taken in connection with the words "powers or privileges," must mean rights acquired adversely to the rest of the world, and peculiar to the individual. Such a right having been acquired, it is but just that the statute should say that any powers exercised by the local authority, under the section, in setting up a market should not interfere with it; but it could never have been meant that the powers given for the benefit of the inhabitants of the particular district in setting up a market should not be exercised in consequence of some private individual or company having a business of the same description." And Blackburn, J., said: "The respondent had no

right, power or privilege to keep it up against any rival that chose to start, and consequently the local authority had power to set up this market, although it interfered with the respondent's business, which was simply an exercise of the same right as any one of the public had."

In the light of these authorities, I think Roman catholics had no rights or privileges, within the meaning of these words, had they stood alone. But when parliament introduced the term, "by practice," there can, I think, be little doubt, that it intended the words to be used in a wider sense, and had in view what I spoke of as "moral rights." Parliament intended, in fact, that whatever any class of persons was, at the time of the union, with the assent of, or at least without objection from the other members of the community, in the habit or custom of doing, in reference to denominational schools, should continue and should not be prejudicially affected by provincial legislation.

How then did things stand at the time of the union? All the schools were, his grace says, denominational schools, some of them being regulated and controlled by the catholic church and others by various protestant denominations. The means necessary for the support of the Roman catholic schools were supplied to some extent, by school fees paid by some of the parents of the children who attended the schools, and the rest was paid out of the funds of the church, contributed by its members. There can be no doubt that these schools were in the strict sense of the word denominational schools, in which the distinctive doctrines and principles of the Roman catholic church were taught, and naturally Roman catholic parents would send their children to these schools. From there being no other schools, as is placed beyond doubt by the affidavits on both sides, than denominational schools, no schools established by law, it is plain that the general public acquiesced in this state of things. They acquiesced in the Roman catholics being, in matters of education, as his grace says: "as a matter of custom and practice separate from the rest of the community." From the circumstance that as education was then carried on they had, in common with every other denomination, a right to establish and maintain schools, and in consequence of their doing so they were, in fact, separate from the rest of the community, but that was not because they had a positive right to be so,—it was merely an incident to their right to have schools.

Now, any right the Roman catholics had, at the time of the union, to establish and maintain schools in which the distinctive doctrines and principles of their church shall be taught, exists still. It is in no way interfered with by the public schools act. Any right they had, by custom or practice, to be separate from the rest of the community, in the matter of education they have unimpaired to-day. The public schools act does not prevent them from having their own denominational schools now, if they desire to have them. It does not require all the children of the province to attend the schools provided for by the act. The Roman catholic church can have schools, and Roman catholic parents can send their children to these schools as fully and as freely as they did at the time of the union. In these respects therefore, any rights or privileges the Roman catholics, as a class of persons had, with respect to denominational schools, have not been prejudicially affected.

It is said, however, that Roman catholics were not, at the time of the union compelled to support public schools, they were not taxed for the support of these. True, they were not, but there was then no law which required any person in the country to contribute for school purposes. And, as pointed out by my brother Killam, even this right or privilege, if it can be called one, was not dependent on, or connected with the existence of denominational schools. It cannot be said to have been, either by law or practice, a right or privilege with respect to denominational schools. If the Roman catholics had had no schools, they would have been equally as free from taxation for educational purposes. As stated in the affidavits of Polson and Sutherland, no school taxes were collected by any authority prior to the province entering confederation. The being free from taxation for schools was a right or privilege which they enjoyed only in common with every one else in the province. It was not a right which they enjoyed adversely to the rest of the community, something which they enjoyed beyond the common advantage of other individuals. They are not now, under the public schools act,

subjected to any exceptional tax. They are only subject to the same taxation as the other ratepayers of the country, so how can it be said that in this respect they are prejudicially affected?

It is, however, argued that by the public schools act a system of free schools supported by public funds is set up, and by reason of these, Roman catholic denominational schools are placed at a disadvantage. They are, it is said, exposed to unfair competition, while at the same time by the taxation for the public schools funds, which would have been available for, and appropriated by Roman catholic ratepayers to, the support of their own schools, are diverted from them. But, before the union, any person, or persons, or any class of persons, might at any time, have established and maintained schools, denominational or non-denominational, which would have entered into competition with the Roman catholic schools, and if possessed of the means might have endowed and maintained the schools so begun as free schools. The Roman catholics had no such right or privilege, as to schools, as would have given them the right to prohibit the establishment and maintenance of such schools. If the argument that, by taxation under the public schools act, the ability of the Roman catholics to maintain their own denominational schools is lessened, and so they are prejudicially affected, is used, the same argument may be urged in connection with all taxation for provincial and municipal purposes. By the British North America act the province has the power of taxation for provincial purposes. At the time of the union no taxes of any kind were imposed, the only public revenue of any kind then collected was the customs duty, usually four per cent. All provincial legislation under which taxes are imposed for provincial or municipal purposes, for making and repairing roads and bridges, or any improvements, is equally open to the objection that by reason of it the ability of Roman catholics to maintain their schools has been lessened. Such taxes are all burdens to which they, in common with the other people of the province, were not subject at the time of the union, but to which they, in common with all other ratepayers, are subjected now. This objection, as indeed all the objections urged in favour of the applicant, seems based on the assumption that the schools under the public schools act, are denominational schools. Now, they are nothing of the kind, they are in the strictest sense public non-sectarian schools. The act provides in the 8th section that they shall be entirely non-sectarian, and no religious exercises shall be allowed in them, except as provided in the 6th and 7th sections. By the 7th section religious exercises shall be held in a public school entirely at the option of the school trustees for the district, and upon receiving written authority from the trustees it is to be the duty of the teacher to hold such exercises. The religious exercises permitted in any public school are, by section 6, to be conducted according to the regulations of the advisory board. The time for them is to be just before the closing hour in the afternoon, and to guard against any possible ground of complaint, it is provided in explicit terms, that, "In case the parent or guardian of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then such pupil shall be dismissed before such religious exercises take place." That the advisory board will act according to the provisions of the act and see to it that any religious exercises prescribed are strictly non-sectarian must be presumed. If it should, in this matter, fail in its duty, its transgression might be cause of complaint, but its acting directly contrary to the plain provisions of the act could never be used as an argument against the act itself. Such non-sectarian religious exercises, or the total absence of all such exercises, can never make the schools denominational in their character.

In New Brunswick, at the time of confederation, there was no system of separate schools established by law. But the parish schools act then in force declared that the board of education should secure to all children whose parents did not object, the reading of the bible in the schools, and that when read by Roman catholic children, it should, if required by their parents, be in the Douay version, without note or comment. By that enactment there was secured what many consider a great right and privilege, and Roman catholics had secured to them the right, if they required it, that when the bible was read by their children it should be in a particular version. The common schools

act, passed after confederation, had no provision on the subject. Then the board of education made a regulation, that, "It shall be the privilege of every teacher to open and close the daily exercises of the school by reading a portion of Scripture (out of the common or Douay version as he may prefer) and by offering the Lord's prayer—any other prayer may be used by permission of the board of trustees, but no teacher may compel any pupil to be present at those exercises against the wishes of his parents or guardian, expressed in writing to the board of trustees." This was a great change from the provision in the parish schools act, for the right Roman catholics had under it, that a particular version of the bible should be read by their children, if they so desired, was taken away, and the reading of that version or not, made optional with the teacher. It was urged in *Re Renaud*, 1 Pugs., N.B.R. 273, that on this as well as the other grounds, the common school act was *ultra vires*, but the court held it was not so. If it was a right or privilege that existed at the union, certainly the legislature had not protected it by any express enactment, but had it been taken away? If it was a right or privilege, then it would be the duty of the board of education instead of making the regulation they had made, to make one securing just what had been provided for by the parish schools act. The court held that if this was a right or privilege in respect of denominational schools within the protection of sub-section 1 of section 93, of the British North America act, though not protected by the common schools act, it was not taken away, so it could not be said that the right was prejudicially affected.

In this province, at the time of the union, Roman catholics had the right to establish and maintain denominational schools in which the distinctive doctrines and principles of the Roman catholic church were taught. To these schools they had the right to send their children.

As incident to the existence of these denominational schools, they were in the matter of education separate from the rest of the community. They maintained these schools at their own expense. Parents who sent children to them paid fees. But no Roman catholic, as no other person in the province, could be compelled to contribute to the support of denominational schools.

Which of these possible rights or privileges has been interfered with, or affected, by the public schools act? It does not enact that there shall be no schools in the province, except those under the act, nor does it provide that the distinctive doctrines and principles of the Roman catholic church shall not be taught in any schools in this province. The Roman catholics may carry on schools since the passing of the act, just as they did at the time of the union. The act does not say that no school fees shall be paid or collected in schools, other than those under this act. The Roman catholics can, just as they did at the union, collect fees from parents sending children to their schools, and maintain their schools in any way they please. There is no provision in the public schools act by which any man in the province, Roman catholic or protestant, can be compelled to support denominational schools.

The only change in the situation is, that while at the union no one could be compelled to contribute for the support of schools—not for the support of public non-sectarian schools, for there were none in existence, nor for the denominational which did exist, for there was no law requiring them to be supported. Now, all the property owners in the province, protestants and Roman catholics alike, are compelled to contribute for the support of the public non-sectarian schools.

It is surely a matter of importance for every state that its citizens should be intelligent and educated. Is it not the duty of every state to see there is brought within the reach of all the children in it, the means of acquiring at least an elementary education, such an education as will fit them, when they grow up, to exercise intelligently the duties of citizenship. If it is the duty of the state to do this, and I do not see how it can be doubted, then it is the duty of the state to provide the funds necessary for the purpose. Providing these funds must be a provincial purpose, for which it is, by sub-section 2 of section 92 of the British North America act, in the power of a province to impose taxation within the province. That providing for the education of the people is a provincial duty is also plainly shown by the provision, both in the British North

America act, and in the Manitoba act, that it shall be exclusively within the jurisdiction of the province to make laws on the subject of education. The only limitation on their powers is, that existing rights or privileges by law or practice as to denominational schools shall not be prejudicially affected.

Speaking of the provisions of section 93 of the British North America act, in his report on The New Brunswick common schools act, dated 20th January, 1872, Sir John A. Macdonald, then minister of justice, expressed it as his opinion, that they applied exclusively to the denominational separate or dissentient schools, and did not in any way affect or lessen the powers of provincial legislatures to pass laws respecting the general educational system of the province. The 22nd section of the Manitoba act must receive the same construction. The public schools act, the validity of which is impeached, is an act dealing with the general educational system of this province.

It does not deal with denominational, separate or dissentient schools. Its object is to provide for the general education of the people, to provide public, non-sectarian schools, open to all the people of the province who choose to take advantage of them for the education of their children. I cannot see that any rights or privileges that roman catholics enjoyed at the time of the union as to denominational schools are dealt with or in any way prejudicially affected by the act.

It must, in my opinion, be held that the appeal fails, and that it should be dismissed with costs.

DUBUC, J.

This matter comes before the court by way of motion to reverse the order or decision of my brother Killam, dismissing the summons taken out to quash by-laws nos. 480 and 483, of the city of Winnipeg.

These by-laws were passed by the city council, to levy for municipal and school purposes, a rate of two cents on the dollar, on all rateable property in the said city, being $15\frac{4}{5}$ mills on the dollar for general municipal purposes, and $4\frac{1}{5}$ mills on the dollar for school purposes.

The applicant, John Kelley Barrett, asks in his summons to have the said by-laws quashed for illegality, upon the following among other grounds: "Because by the said by-laws the amounts to be levied for school purposes for the protestant and catholic schools are united, and one rate levied upon protestants and Roman catholics alike for the whole sum."

The by-laws in question were made in compliance with the provisions of the act respecting public schools, passed at the last session of the provincial legislature, 53 Vic., c. 38, and under the provisions of the municipal act.

The said applicant states in his affidavit that the effect of the said by-laws is that one rate is levied upon all protestant and Roman catholic ratepayers in order to raise the amount required for school purposes, and the result to individual ratepayers is, that each protestant will have to pay less than if he were assessed for protestant schools alone, and each Roman catholic will have to pay more than if he were assessed for Roman catholic schools alone.

This involves the constitutional question, whether the said act respecting public schools is, or is not, *intra vires* of the provincial legislature.

To determine that serious question, it is important to consider what schools were in existence in this country when this province was admitted into the Canadian confederation, and what provisions were made at the time of the union in regard to the matter. It may also be proper to give a brief outline of the laws which, under the provisions of the constitutional acts were enacted by the legislature, were put in operation, and were in force in this province until repealed and replaced by the statute respecting public schools of last session, and to examine the features of the said last mentioned statute.

As stated in the affidavit of his grace the archbishop of St. Boniface, filed on behalf of the applicant, and not denied by the other side, the following state of facts is shown: "2, prior to the passage of the act of the dominion of Canada, passed in the 33rd year of the reign of her majesty Queen Victoria, c. 3, known as the Manitoba act, and

prior to the order-in-council issued in pursuance thereof, there existed in the territory, now constituting the province of Manitoba, a number of effective schools for children; 3, these schools were denominational schools, some of them being regulated and controlled by the Roman catholic church, and others by various protestant denominations; 4, The means necessary for the support of Roman catholic schools were supplied, to some extent, by school fees paid by some of the parents of the children who attended the schools, and the rest were paid out of the funds of the church, contributed by its members; 5, During the period referred to, Roman catholics had no interest in, or control over, the schools of the protestant denominations, and the members of the protestant denominations had no interest in, or control over, the schools of the Roman catholics. There were no public schools in the sense of state schools. The members of the Roman catholic church supported the schools of their own church, for the benefit of the Roman catholic children, and were not under obligation to, and did not contribute to the support of any other schools. In the matter of education, therefore, during the period referred to, Roman catholics were, as a matter of custom and practice, separate from the rest of the community, and their schools were all conducted according to the distinctive views and beliefs of Roman catholics as herein set forth."

In the following paragraph of his said affidavit, his grace states that the church regards the schools provided for by the public schools act, as unfit for the purpose of educating their children, and the children of Roman catholic parents will not attend such schools; that rather than countenance such schools, Roman catholics will revert to the system in operation previous to the Manitoba act, and will establish, support and maintain schools in accordance with their principles and faith; that protestants are satisfied with the system of education provided for by the said the public schools act, and are perfectly willing to send their children to the schools established and provided for by the said act, such schools are, in fact, similar in all respects to the schools maintained by the protestants under the legislation in force immediately prior to the passage of the said act, etc., etc.

The affidavits filed in opposition to the motion state that schools which existed prior to the province of Manitoba entering confederation were purely private schools, and were not in any way subject to public control, nor did they in any way receive public support. No school taxes were collected by any authority, and there were no means by which any persons could be forced by law to support any of the said private schools.

As stated by my brother Killam, these affidavits are in no way contradictory to or inconsistent with the statements made by his grace.

In his affidavit, also filed herein, Reverend Professor Bryce gives his views as to what were the opinions of the presbyterians of this province in the years immediately succeeding the entrance of Manitoba into confederation; but as he only came into this country in 1871, one year after, he does not pretend to contradict any of the statements made by the archbishop of St. Boniface on what was the position of affairs in regard to the denominational schools, either Roman catholic or protestant then existing.

So it remains established that the schools then in operation, although there was no law to give them legal sanction, were *de facto*, i. e., in practice, denominational schools.

The provisions of law in regard to schools, made applicable to Manitoba at the union, were the 93rd section of the British North America act, and the 22nd section of the Manitoba act.

Under the said provisions of our constitution, the provincial legislature, at its first session, in 1871, passed an "act to establish a system of education in this province." By the said act, the lieutenant-governor-in-council was empowered to appoint not less than ten, nor more than fourteen persons, to be a board of education for the province, of whom one-half were to be protestants, and the other half catholics; also one superintendent of protestant schools and one superintendent of catholic schools, who were joint secretaries of the board.

The duties of the board were described as follows: "1st. To make from time to time such regulations as they may think fit for the general organization of the common schools; 2nd. To select books, maps, and globes to be used in the common schools, due

regard being had in such selection to the choice of English books, maps and globes for the English schools, and French for the French schools, but the authority hereby given is not to extend to the selection of books having reference to religion or morals, the selection of such being regulated by a subsequent clause of this act; 3rd. To alter and sub-divide, with the sanction of the lieutenant-governor-in-council, any school district established by this act."

The general board was divided into two sections, and among the duties of each section, we find the following: "Each section shall have under its control and management the discipline of the schools of the section; it shall make rules and regulations for the examination, grading and licensing of teachers, and for the withdrawal of licenses on sufficient cause; it shall prescribe such of the books to be used in the schools of the section as have reference to religion or morals."

By section 13, the monies appropriated to education by the legislature were to be divided equally, one moiety thereof to the support of protestant schools, the other moiety to the support of catholic schools.

The first board appointed by the lieutenant-governor-in-council, was composed of the bishop of St. Boniface, the bishop of Rupert's Land, several catholic priests, several protestant clergymen of various denominations, and a couple of laymen for each section.

The said statute was amended from time to time, as the country was becoming more settled, and new exigencies arose. But the same system prevailed until the act of last session; the only substantial amendments were that, in 1875, the board was increased to twenty-one, twelve protestants and nine Roman catholics, and the monies voted by the legislature were to be divided between protestants and catholics in proportion to the number of children of school age in the respective protestant and catholic districts.

The more noticeable change in the system was that the denominational distinction between the catholics and protestants, and the independent working of the two sections, became more and more pronounced under the different statutes afterwards passed. Section 27, of the act of 1875, c. 27, says, that the establishment of a school district of one denomination shall not prevent the establishment of a school district of the other denomination in the same place.

The same principle is carried out and somewhat extended by sections 39, 40, and 41, of the act of 1876, c. 1.

In 1877, by c. 12, s. 10, it was enacted that in "no case a protestant ratepayer shall be obliged to pay for a catholic school, and a catholic ratepayer for a protestant school."

So it is manifest that, until the act of last session, the school system created by the provincial legislature, under the provisions of the constitutional act, was entirely based and carried on, on the denomination principle, as divided between protestant and Roman catholic schools.

At the last session of the legislature, two acts were passed in respect of education. The first one, c. 37, abolishes the board of education heretofore existing, and the office of superintendent of education, and creates a department of education which is to consist of the executive council or a committee thereof, appointed by the lieutenant-governor-in-council, and also an advisory board composed of seven members, four of whom are to be appointed by the department of education, two by the teachers of the province, and one by the university council. Among the duties of the advisory board is the power "To examine and authorize text books and books of reference for the use of the pupils and school libraries; to determine the qualification of teachers and inspectors for high and public schools; to appoint examiners for the purpose of preparing examination papers; to prescribe the form of religious excercises to be used in schools."

The next act is, the public schools act, c. 38. It repeals all former statutes relating to education. It enacts, amongst other things, as follows: section 3, "All protestant and catholic school districts, together with all elections and appointments to office, all agreements, contracts, assessments and rate bills heretofore duly made in relation to protestant or catholic schools, and existing when this act comes into force,

shall be subject to the provisions of this act." Section 4, "The term for which each school trustee holds office at the time this act takes effect shall continue as if such term had been created by virtue of an election under this act." Section 5, "All public schools shall be free schools, and every person in rural municipalities between the age of five and sixteen years, and in cities, towns and villages, between the age of six and sixteen, shall have the right to attend some school." Section 6, "Religious exercises in public schools shall be conducted according to the regulations of the advisory board. The time for such religious exercises shall be just before the closing hour in the afternoon. In case the parent or guardian of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then such pupil shall be dismissed before such religious exercises take place." Section 7, "Religious exercises shall be held in a public school entirely at the option of the school trustees for the district, and upon receiving written authority from the trustees, it shall be the duty of the teacher to hold such religious exercises." Section 8, "The public schools shall be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided."

It provides for the formation, alteration, and union of school districts in rural municipalities, and in cities, towns or villages, the election of school trustees, and for levying a rate on the taxable property in each school district for school purposes.

Section 92 enacts that "the municipal council of every city, town and village shall levy and collect upon the taxable property within the municipality in the manner provided in this Act and in the municipal and assessment acts, such sum as may be required by the public school trustees for school purposes."

Section 108, which provides for the legislative grant to schools, has the following sub-section, "(3) Any school not conducted according to all the provisions of this, or any act in force for the time being, or the regulations of the department of education, or the advisory board, shall not be deemed a public school within the meaning of the law, and shall not participate in the legislative grant." By section 143, "No teacher shall use or permit to be used as text books, any books in a model or public school, except such as are authorized by the advisory board, and no portion of the legislative grant shall be paid to any school in which unauthorized books are used." By section 179, "In cases where, before the coming into force of this act, catholic school districts have been established as in the next preceding section mentioned *(that is, covering the same territory as any protestant district)*, such catholic school district shall, upon the coming into force of this act, cease to exist, and all the assets of such catholic school district shall belong to, and all the liabilities thereof be paid by the public school district."

It is easy to see from the above that the new act makes a complete change in the system. The denominational division of catholics and protestants is entirely done away with, and by section 179, where, as in this case, a catholic school district is supposed to cover the same territory as any protestant school district, the said catholic school district is not only wiped out, but its property and assets are vested in, and belong to the other school district, which under the act becomes the public school district.

Let us see now what are the provisions of the British North America act and of the Manitoba act applying to the case. Section 93 of the British North America act enacts, that, "In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions: (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union."

The first sub-section of section 22, of the Manitoba act, is substantially the same, the only difference being in the addition of the words, "or practice" which makes it read thus: (1) "Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union."

The whole question to be determined in this case turns upon the construction of the words "or practice" added to the provision of the Manitoba act.

The rules of construction of statutes as laid down by the authorities, are well known. Though all based on the strict principles of justice, they, in their application

offer some distinction and some apparent differences, in order to meet the numerous exigencies of the various cases under consideration. One rule, perfectly sound as applicable to a particular case, under a particular set of circumstances, might be unjust and unfair if applied to another case with different circumstances. Per Lord Blackburn in *Edinburg Street Tramways Co.* v. *Torbain*, 3 App. Cas. 68.

One of the first elementary rules is, that when the words of the statute admit of but one meaning, a court is not at liberty to speculate on the intention of the legislature as to construe an act according to its own notions of what ought to have been enacted. *Maxwell on Statutes, 6 ; R.* v. *York and North Midland Railway Co.*, 1 E. & B. 858.

When the language is precise and unambiguous, but at the same time incapable of reasonable meaning, and the act is consequently inoperative, a court is not at liberty to give the words, on mere conjectural grounds, a meaning which does not belong to them. *Maxwell on Statutes*, 23.

But the above rule is confined to cases where the language is precise and capable of but one construction.

If the words, "or practice," inserted in the Manitoba act, were as clear and unambiguous as to admit of but one construction, the above rule would have to be applied, and there would be no use for prosecuting the enquiry any further. But such is not the case. They are said to mean that the roman catholics, while compelled to contribute to the support of public schools, are by said words, allowed to have and maintain their denominational schools as private schools ; this is the narrower construction. They are also alleged to secure to catholics the privilege of being exempted from compulsory attendance at the public schools ; another and more liberal construction is that the denominational schools, existing as a matter of fact at the time of the union, were given by these words, a legal *status*, so that they coul not afterwards be interfered with by the provincial legislature.

As seen by these different interpretations, the words "or practice' are susceptible of more than one construction ; another rule then has to be applied.

An old rule of construction says that a thing which is within the letter of the statute is not within the statute, unless it be also within the meaning of the legislature. *Maxwell*, 24 ; *Bacon's Abrid. Statute*, (1), 5.

As stated by *Maxwell* at p. 27, "to arrive at the real meaning, it is always necessary to take a broad general view of the act, so as to get an exact conception of its aim, scope and object. It is necessary, according to Lord Coke, to consider: 1. What was the law before the act was passed ; 2. What was the mischief or defect for which the law had not provided ; 3. What remedy parliament has appointed ; and 4. The reason of the remedy." That rule was laid down in *Heydon's Case*, 3 rep. 7, decided as late back as during the reign of Elizabeth, and has been followed ever since.

In order to find out the exact and true meaning of certain words contained in a statute, it becomes sometimes important to go into the history of the matter and examine ths external circumstances which led to the enactment in question.

In *River Wear Commissioners* v. *Adamson*, 2 app. cas., Lord Blackburn says at p. 756 : "I shall state as precisely as I can what I understand from the decided cases, to be the principles on which the courts of law act in construing instruments in writing, and a statute is an instrument in writing. In all cases the object is to see what is the intention expressed by the words used. But from the interpretation of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used, and what was the object appearing from the circumstances, which the person using them had in view, for the meaning of words varies according to the circumstances with respect to which they were used."

"In the interpretation of statutes," says Maxwell, at p. 30, citing *Graham* v *Bishop of Exeter*, rep. by Moore 462, "the interpreter, in order to understand the subject matter, and the scope and object of the enactment, must, in Coke's words, ascertain what was the mischief or defect for which the law had not provided, that is, he must call to his aid all those external or historical facts which are necessary for this purpose, and which

led to the enactment, and for these he may consult contemporary or other authentic works and writings."

In *Attorney-General* v. *Sillem*, 2 H. & C., Lord Bramwell expressed the same view when he said at p. 529: "It may be a legitimate mode of determining the meaning of a doubtful document to place those who have to expound it in the situation of those who made it, and so, perhaps history may be referred to to show what facts existed bringing about a statute, and what matters influenced men's minds when it was made."

Similar language was used by L. J. Turner in *Hawkins* v. *Gathercole*, 6 De G., M. & G. 1. He says at pp. 20 and 21: In construing acts of parliament, the words which are used are not alone to be regarded. Regard must also be had to the intent and meaning of the legislature. The rule upon the subject is well expressed in the case of *Stradling* v. *Morgan; Plowd*, 204; and also in *Eyston* v. *Studd; Plowd*, 467:—" .... In determining the question before us, we have, therefore, to consider not merely the words of the act of parliament, but the intent of the legislature to be collected from the cause and necessity of the act being made from a comparison of its several parts, and from foreign (meaning extraneous) circumstances, so far as they can justly be considered to throw light upon the subject."

In *Holme* v. *Guy*, 5 Ch. D. 905, Jessel, M.R., said: "The court is not oblivious of the history of law and legislation. Although the court is not at liberty to construe an act of parliament by the motives which influenced the legislature, yet, when the history of law and legislation tells the court what the object of the legislature was, the court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view to finding out what it means, and not with a view of extending it to something that was not intended."

In the light of those authorities, it becomes necessary in trying to determine the true meaning of the words "or practice," in the Manitoba act, to examine under what circumstances these words were introduced into the statute, and the grounds, if they can be ascertained, on which they were inserted.

The 93rd section of the British North America act gives to the legislature of each province the exclusive power to make laws in relation to education, subject however, to certain restrictions, the first of which says that nothing in any such law shall prejudicially affect any right or privilege which any class of persons have by law, etc. The first sub-section of the 22nd section of the Manitoba act says: " ..... which any class of persons have by law or practice," etc.

Why were these words "or practice" introduced? What was intended by said words? The true meaning intended by the legislature can only be ascertained by examining the historical facts and circumstances connected with the school question, which led to the provisions of the 93rd section of the British North America act, and the 22nd section of the Manitoba act being enacted.

When the four provinces of Ontario, Quebec, Nova Scotia and New Brunswick joined in the confederation scheme, each of these provinces was already fully organized and had a system of public schools, established by law. In Ontario and Quebec, the law authorized dissentient or separate schools of a denominational character, in localities where the minority had a religious belief different from the creed of the majority. The minorities, in establishing separate or dissentient schools, were exempt from taxation for the support of public schools, and were allowed a proportionate share of the legislative grant. The systems in Ontario and in Quebec were not exactly the same, but they had some common features embodying the principle of denominational schools.

In Upper Canada the question of separate schools had been the subject of a long and bitter struggle between protestants and catholics, but the matter had been finally settled by the school act of 1863.

In Nova Scotia and New Brunswick, it appears that the Roman catholic minorities had in practice their own schools under the common or parish school laws; but the said schools were not recognized by law as such denominational schools, and the catholics had no right or privilege by law in respect of denominational schools.

In framing the British North America act, the fathers of confederation, in order to guard the populations of the different provinces against the agitation and turmoil

which had been raised on that question between catholics and protestants in the old province of Canada, while conceding and asserting the principle that each of the provinces might exclusively make laws in relation to education, thought proper to protect the religious feelings, and secure the right and privilege of the minorities on that subject, by enacting the limitations found in the sub-sections of the 93rd section. These limitations were to apply to new provinces entering confederation as well as to the four original provinces.

The extent of the limitations imposed on provincial legislatures by the said provisions, was first raised and questioned in New Brunswick. The law relating to the subject, at the time of the union, was the parish schools act of 1858. In 1871, the legislature of New Brunswick passed an act relating to common schools, to which the Roman catholics of the province had very strong objections. Petitions were sent to the provincial legislature, and afterwards to the dominion authorities, against the coming into effect of the act. The matter was taken before the Supreme Court of New Brunswick, in *ex-parte Renaud*, reported in 2 *Cartwr. cas.*, 465, and an elaborate judgment was pronounced in the case by the court. The court decided in effect, that the catholics of New Brunswick had not *by law* at the union, any right or privilege in respect to denominational or separate schools. In dealing with the question, the court insists on the fact that the catholics had no rights or privileges by law, which were the only rights or privileges contemplated and secured by the first sub-section of the 93rd section of the act. The expression "legal right or privilege" is almost constantly used. In the course of the judgment, Chief Justice Ritchie, now chief justice of the supreme court of Canada, speaking for the majority of the court, said: "Where is there any thing that can, with propriety, be termed a legal right? Surely the legislature must have intended to deal with legal rights and privileges. How is it to be defined? How enforced?" And elsewhere: "If the Roman catholics had no legal rights, as a class, to claim any control over, or to insist that the doctrines of their church should be taught in all or any schools under the parish schools act, how can it be said (though as a matter of fact such doctrines may have been taught in numbers of such schools) that, as a class of persons they have been prejudicially affected in any legal right or privilege with respect to 'denominational schools' construing those words in their ordinary meaning, because under the common schools act, 1871, it is provided that the schools shall be non-sectarian?"

From the above quotations, where *legal* rights only are considered and dealt with, and from the other arguments advanced and expressions used, it may fairly be inferred that, if the Roman catholics of New Brunswick, instead of having only their right and privilege *by law* secured by the statute, they had had their right and privilege *by practice* equally secured, the judgment of the court might have been different.

As to the point raised on the argument by Mr. Ewart, of counsel for the applicant, that the words "or practice" were likely inserted in the Manitoba act to remedy the defect which caused the difficulties in New Brunswick, which point was answered by the attorney-general, that such could not be the case, because the New Brunswick common schools act was passed only in 1871, one year after the Manitoba act, this, at least, may be said: it appears from the journals of the legislative assembly of New Brunswick that the bill relating to common schools was introduced and put through the house of assembly by the Hon. Geo. A. King, attorney-general of the province, in 1871; that the same Hon. Geo. A. King had, in 1869, introduced in the legislative assembly a similar bill, which had been read a first time; that the same Hon. Geo. A. King, did, on the 24th of February, 1870, introduce a similar bill which was read a first and second time, referred to the committee of the whole, and considered and discussed in four distinct sittings of the said committee of the whole, on the 17th March, 22nd March, 31st March, and 1st April. That bill provided that it was not to come into operation for one year after the passage thereof.

The Manitoba act passed by the dominion parliament, did not become law until the 12th of May of the same year. It was not introduced into the house until the second day of May, more than a month after the discussion in the legislature of New

Brunswick of the common schools bill in question. Is it not therefore reasonable to infer and presume that the discussion which took place in the legislative assembly of New Brunswick at the different sittings held on said school bill in question were, as usual, reported and criticized in the public press, and that such reports and criticisms came to the knowledge of members of the dominion government and other persons who had something to do with the framing of the Manitoba act? This most natural inference becomes, under the circumstances, such a presumption as not to be neglected in the construction of the words in question. Presumptions are constantly used in determining the real intent and meaning of statutes.

We have the fact that, when the Manitoba act was passed, there were denominational schools in this country, and the further fact that there was no law to protect in their privilege the minorities of the future, either catholic or protestant, who might wish the continuance of said denominational schools. These facts, we must assume, were well known to the legislators. If the province had entered confederation with no other protection to minorities, with respect to denominational schools, than the first sub-section of the 93rd section of The British North America act, as there was no law in the country with respect to denominational schools, or even to any kind of schools, the first sub-section of the 93rd section, or its re-enactment without modification in the Manitoba act, would have remained a dead letter. As there was no law, there was no right or privilege by law to be protected. The Roman catholics of this province were even in a worse position than those of New Brunswick, because there, as seen by the judgment of the supreme court of that province already referred to, the catholics had, under the parish schools act of 1858, numbers of schools in which, as a matter of fact, the doctrines of their church were taught, though the parish schools act did not confer on them, as a class, any right or privilege with respect to denominational schools. This position of affairs must have impressed the men who framed the Manitoba act, and shows conclusively to my mind that the words, "or practice," were inserted in the Manitoba act for only one and very manifest purpose, that is, to protect in their right and privilege, as to denominational schools, the catholics or protestants who might in the future find themselves in the minority in this province.

We must not overlook the fact that it was considered, and well known at the time, that the protestants and catholics were in about equal numbers in the province. That proposition is sufficiently established by the fact that the first school act passed by the Manitoba legislature in 1871 provided that an equal number of protestants and catholics were to be appointed as members of the board of education, and that the monies voted by the legislature should be equally divided, one half to be appropriated for the support of protestant schools, and the other half for the support of catholic schools.

Another fact not to be left unnoticed is that Manitoba was the only province entering confederation after the original union for which the provisions of the 93rd section of the British North America act were departed from and modified. Nothing of the kind is found in the terms made with British Columbia and Prince Edward Island when they entered confederation in 1871 and 1873. Why was that departure from the provisions of the British North America act made in regard to denominational schools for Manitoba only? Undoubtedly because it was well known that the population of this province was equally divided between the protestants and Roman catholics, and that there was already by practice, in the country, denominational schools, which the legislature intended to protect and insure permanently to any class of persons, either protestants or catholics, who might desire to continue in the enjoyment of that privilege. That accounts for the insertion of the two words "or practice" in the Manitoba act.

Before examining more fully what is the true and real purport of the words "or practice," as applying to the right and privilege in question, it may be convenient to consider what is a right and what is a privilege. A right is a just claim; a legal title; something positive, which can be enforced by law. A privilege is sometimes also a direct advantage or benefit; but it is often considered more as of a negative character,

such as an immunity, an exemption from some burden, beyond the common advantage of other individuals. So, the words "right" and "privilege" are technical words, having by themselves well defined legal meanings.

The same cannot be said of the word "practice," in the sense in which it is used in this sub-section. It is not a technical legal word, and it has no particular legal meaning. It is not found in any such sense in law dictionaries. It is only an ordinary popular word to be construed in its ordinary popular sense. It means custom or habit, use or usage. In the sub-section in question, it qualifies the words "right" and "privilege." "Privilege by law" may be considered a technical expression, to be construed according to its technical meaning. But "privilege by practice" becomes an ordinary popular expression to be interpreted in its popular sense.

"The words of a statute," says *Maxwell*, at p. 67, "are to be understood in the sense in which they best harmonize with the subject of the enactment and the object in view."

In *Jessen* v. *Wright*, 2 Bligh., Lord Redesdale says at p. 56, "That the general intent shall overrule the particular is not the most accurate expression of the principle of decisions. The rule is that technical words shall have their legal effect, unless from other words it is very clear that the testator meant otherwise." The above was quoted approvingly by Lord Wensleydale in *Roddy* v. *Fitzgerald*, 8 H. L. 877.

In *The Fusilier*, 34 L. J. P. M. & A. 27, the words "persons belonging to the ship," in the merchant shipping act, 1854, were, in matter of reward for salvage, construed to apply to passengers as well as to the crew. "As to the words, 'belonging to such ship,'" says Dr. Lushington, "'belonging' is certainly a word *ancipitis usus* with reference to the subject matter; but one of the rules of construing statutes, and a wise rule too, is that they shall be construed *uti loquitur vulgus*, that is, according to the common understanding and acceptation of the terms, and I think that nothing is more common than to say of passengers by a ship that they are persons belonging to the ship, and would be included under the expression "persons."

In this case, the expression "privilege by practice" must be construed in its popular sense, having always in sight the object which the legislature had in view when they were dealing with limitations to the power of the provincial legislature in regard to schools, and when they knew that certain classes of persons had by practice, i. e., by custom and usage, denominational schools which were sought to be protected. That construction "harmonizes best with the object which the legislature had in view."

The mere change of a word in a similar statute for another word of the same purport, or the addition of one or more words of the same purport as the word already used, does not always show an intention of the legislature to have it operate as a change or alteration of the meaning. But it is not so here. The words, "by law," and "by practice," cannot be considered as of the same purport. The addition of the words "or practice," show clearly an intention of the legislature to give an entirely new meaning to the provision, and to add something to the limitation already imposed on the provincial legislature, in order to make it apply to, and provide for, the case under consideration. What is then the true meaning intended by the legislature in inserting those words?

It is contended that very little importance should be attached to the words. It cannot, however, be supposed that they were placed there fortuitously, unmeaningly, on the speculative chance that they might fit some hypothetical unknown state of things. The position of denominational schools then existing by practice, was known by the framers of the act through the delegates sent from this country to negotiate and arrange with the dominion authorities the terms on which the new province would enter confederation. In the course of those negotiations, the provisions respecting schools, to be inserted in the act, must have been fully discussed. Those words were therefore inserted advisedly to secure to those interested the permanency of denominational schools enjoyed at the time by practice, but not recognized by law. This must have been the privilege by practice meant by the provision.

The adverse contention is, that the only privilege enjoyed by Roman catholics before the union, and secured by the words, "by practice," was the privilege of having

denominational schools sustained by themselves as private schools, and that, under the new school law, they may have the same privilege still. The privilege of being taxed for the support of schools from which according to their conscience and to the principles of their faith, they could derive no benefit, and of taxing themselves besides for the only schools to which they could conscientiously send their children, would be a very strange privilege indeed. Let us see whether such could have been the intention of the legislature in adding the words "or practice" in the Manitoba act.

Strictly speaking, the legislature has, within the scope of its jurisdiction, the unlimited power to make any, even unjust or absurd, enactments. But, at the same time, it is never contemplated that in civilized modern countries a legislature would disregard and set at naught the well known principles of natural justice and equity. The right of any persons or class of persons to have and support private schools is a primordial right, as the right to breath air or eat bread. Supposing the legislature of a province, having full power to do so, would pass a public school act with compulsory attendance, which all ratepayers would be bound to support, that would not affect the natural right of a citizen to teach his own children in his own house, before school time in the morning, between school hours in the middle of the day, or after the closing of the public school in the afternoon, and so to have and conduct a private school in his own premises. Nothing even would prevent him from having his neighbour's children attending such teaching, or having such teaching done by his daughter, or any other person. This would be a private school which no one would by law be bound to support, a school of the same nature as those stated to exist before the union. Such a natural right does not want any legislation to protect it. Can we, therefore, suppose that the only thing which was aimed at and intended by the dominion parliament in adding the the words "by practice" was to protect and insure to the minority of the future the natural right to have such schools? Can we, reasonably, assume that the federal parliament, anticipating and fearing that the Manitoba legislature might, against all natural justice and fairness, deprive a whole class of persons of such primordial right, inserted the words "or practice" for the only purpose of guarding and protecting the minority that might be, against such unjust and oppressive legislation? That surely could not have been anticipated, and the enactment could not have been intended to prevent such imaginary mischief.

In *R. v. Skeen* case, Bell 115, Lord Campbell said, "When by the use of clear and unequivocal language, capable only of one construction, anything is enacted by the legislature, we must enforce it, although in our opinion it may be absurd or mischievous. But if the language employed admit of two constructions, and according to one of them the enactment would be absurd or mischievous, and according to the other it would be reasonable and wholesome, we surely ought to put the latter construction upon it as that which the legislature intended." A similar view was expressed by Parke, B., in *Beck v. Smith*, 1 M. & W., 195, where he held that, when the grammatical construction of the words used would lead to any manifest absurdity or inconvenience, the language may be varied or modified so as to avoid such inconvenience.

But, as it may be further objected on this point, as the legislature has the power to pass statutes to establish a state church, to prescribe an oath of supremacy objectionable to Roman catholics, to disfranchise or create other disabilities affecting them, why was there no provision made to protect them against such contingencies? The reason is obvious: because it was confidently and rightly understood and taken for granted that the people on whom a constitution based on the representative system, was being conferred, were civilized and reasonable enough not to wantonly depart, on these questions, from the broad and equitable principles prevailing in modern British and other civilized constitutional institutions. A constitution assumes a certain number of general principles, and is not supposed to provide for every minor detail of having its provisions carried out. As to schools, however, the question had very properly to be looked upon in a different light. The experience of the past had taught a profitable lesson; the difficulties and controversies which had arisen before on that question in Ontario, Quebec, and other centres of mixed population, the strong prejudices by which certain persons and

certain classes were liable to be carried on that point, engendering the most bitter feelings in communities otherwise living harmoniously together, must have shown to the legislators that this was a live and burning question to be settled and provided for, and influenced them to protect the new province against the trouble and agitation experienced over it elsewhere.

If, as I have stated, by being narrowly construed to protect only private schools which need no protection, the words "or practice" would be a superfluous and meaningless enactment, they must have some other meaning. By carefully considering all the circumstances which led to their being inserted in the Manitoba act, it appears to me most evident that the dominion legislature, knowing that there were effective denominational schools in the country, knowing also that there being no law to authorize them, the right or privilege to have them maintained would not be secured after the union by the provisions of the British North America act, clearly intended to give legal sanction to the privilege enjoyed by practice.

To the contention that the new school law does not interfere with the privilege of any class of persons to have still denominational schools, as private schools, the Roman catholics can justly say: If the new act does not take from us the right of having our schools, it deprives us of the privilege of subscribing exclusively for our own schools. Prior to the union, the Roman catholics had the positive right of having their own denominational schools; they had, besides the negative right, that is, the privilege of not being compelled to support other schools. They had that right and privilege as a matter of fact, and the words "or practice" were inserted to prevent their being interfered with under the new constitution.

Besides considering the historical facts and circumstances bearing upon a statute to ascertain its real sense, another mode of determining its true meaning is to examine its different parts, and even parts of other acts on the same subject. As stated by Lord Mansfield in *R.* v. *Loxdale*, 1 Burr. p. 447, "when there are different statutes *in pari materia*, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system, and as explanatory of each other."

According to L. J. Turner, in *Hawkins* v. *Gathercole*, already cited, the court has to consider not only the words of the act of parliament, but the intent of the legislature, to be collected from the cause and necessity of the act being made, from a comparison of its several parts, and from foreign circumstances, so far as they can justly be considered to throw light upon the subject.

So far, I have dealt only with the first sub-section of the 93rd section of the British North America act, and the corresponding sub-section in the Manitoba act.

The 2nd sub-section of the said 93rd section of the British North America act extends to the dissentient schools of the protestants and Roman catholics of Quebec, the powers, privileges and duties conferred and imposed by law at the union on the separate schools and school trustees of the Roman catholics in upper Canada.

By the 3rd sub-section it is enacted that: "Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the governor general in council from any act or decision of any provincial authority affecting any right or privilege of the protestant or catholic minority of the queen's subjects in relation to education."

The 4th sub-section provides for remedial laws to be made by the parliament of Canada for the due execution of the provision of that section and of any decision of the governor-general-in-council, as the circumstances of each case may require, on an appeal being made for that purpose. Of these provisions the first sub-section is reproduced in the Manitaba act with the addition of the words "or practice." Sub-section 2 is omitted. Sub-section 3 is re-enacted in an altered form; the first three lines are omitted, and the appeal is allowed, not only from any act or decision of any provincial authority, but also from any act or decision of the legislature of the province. Sub-section 4 is inserted *verbatim*. Sub-sections 2 and 3 of section 22 of the Manitoba act correspond to sub-sections 3 and 4 of section 93 of the British North America act.

In this case, we have nothing to do with the appeal provided for by the two last mentioned sub-sections. But we are entitled to consider them if they can throw any light on the meaning of the first sub-section.

The first sub-section speaks of any right or privilege with respect to denominational schools; the second subsection gives an appeal from any act or decision of the legislature, or of any provincial authority, affecting any right or privilege of the protestant or Roman catholic minority in relation to education. If the minority, either protestant or catholic, had any right or privilege in relation to education, it must be a right or privilege in regard to their own respective schools, that is, their own denominational schools. Why should there be an appeal to protect their right or privilege, if they had none? The appeal must have been provided because the dominion legislature meant and intended that the denominational schools which protestants as a class, and Roman catholics as a class, had by practice at the union, were to have a legal recognition under the Manitoba act, and, as such were to be protected against any act of the provincial legislature as well as against any act or decision of any provincial authority. The meaning which, I have held, should be given to the words "or practice," is thus explained and confirmed by reference to the other provisions of section 22 of the Manitoba act, and the corresponding provisions of the 93rd section of the British North America act. As already mentioned, there was no reason to re-enact, in the Manitoba act, any of the provisions of the 93rd section in relation to denominational schools, and in relation to appeals by minorities, if there was no such privilege already existing by practice which was intended to be recognized by law under the new constitution.

An objection made against the claim of the applicant is, that if the Roman catholics are entitled to be secured in the continuance of the denominational schools, the other various denominations of protestants would have the same privilege. I do not see that this is an objection at all. The provision speaks of any class of persons having by law or practice any right or privilege with respect to denominational schools. As it is established that the schools existing at the union were denominational schools, respectively controlled by the Roman catholics and by the various protestant denominations, I see no reason to doubt that, if the first sub-section of the 22nd section of the Manitoba act is to be taken alone and independently of the other sub-sections the adherents of the English church, the presbyterians, the episcopalians, and any other denominations of protestants who had by practice denominational schools at the time, would be entitled, under this provision, to keep and maintain them as such. That is one aspect of the question.

The other aspect appears when we look at the other sub-sections in the British North America act, and in the Manitoba act. Christians who, for centuries have been in all christendom divided into two great classes, Roman catholics and protestants, and designated as such, are also in the above-mentioned sub-sections, for the purpose of denominational schools, divided and designated as Roman catholics and protestants. It being an elementary rule that construction of a statute is to be made of all its parts together, and not of one part only, we must look to these different provisions applying to the subject matter, and, in doing so, we are led to the conclusion that the legislature, in speaking of any class of persons in respect of denominational schools, intended to refer to the Roman catholics as a body, and to protestants as a body, and to apply the protection to either one or the other who might happen to be in the minority.

It is also said that the only privilege secured to the Roman catholics by the words "or practice," is the right to exempt from compulsory attendance at the public schools which might be established. But there was no such thing here at the time as public schools, in the sense of state schools, and no such thing as compulsory attendance. That question of compulsory attendance was not in issue between protestants and catholics, or between particular denominations of protestants. That question could not have been contemplated in the limitation clause of the Manitoba act, as securing the right or privilege of any class or body of christians against the probable tendencies of any other christian body who might thereafter find themselves in the majority. The words, there-

fore, were not inserted to prevent a wrong, or remedy an evil which did not exist, was not foreseen, and was not apprehended, because it was not in issue.

On the argument, it was contended by the attorney general that, if the catholics have by the first sub-section in the Manitoba act, the privilege of being exempt from contributing to the support of any other but their own denominational schools, the provincial legislature would be deprived of the power to pass any effective school law, because the persons who had no children and had not to pay for any schools before the union, would claim that the privilege heretofore enjoyed by them from being taxed to support any schools, would be prejudicially affected. The objection is not a serious one. The law deals with classes, not individuals. The provision was made to protect the rights and privilege which any class of persons had with respect to denominational schools, not the claim or privilege of individuals who happened not to support any school.

It was also urged by the attorney general that, if the dominion parliament had intended to secure to the catholics of the province the right to have their own denominational schools as in Ontario and Quebec, why was not a special provision in regard to it put in the Manitoba act, similar to the 2nd sub-section of the 93rd section of the British North America act. And he argues that the omission shows that there was no such intention. In the first place, that sub-section is a positive provision extending to the dissentient schools in Quebec the powers, privileges and duties which the catholics of Ontario had by law before the union in regard to separate schools. There were no such schools existing by law in this country at the time. In the second place, the question may be satisfactorily answered by its being thus retorted: If the dominion parliament did not intend to secure to the Roman catholics the right and privilege enjoyed by them at the union with regard to denominational schools, why were the principal provisions of the 93rd section of the British North America act re-enacted in the Manitoba act, and why were such provisions amended by extending further and increasing the limitations already imposed on provincial legislatures? If parliament had no such intention, the British North America act was quite sufficient. There was no necessity and no use for re-enacting its provisions and extending the limitation clause already existing.

Reverting to the interpretation of statutes susceptible of more than one construction, it is an elementary rule that the construction which appears more just and more reasonable will be adopted.

In *Regina* v. *Monk*, 2 Q.B.D. 555, Brett, L. J., said that "when a statute is capable of two constructions, one of which will work a manifest injustice, and the other will work no injustice, you are to assume that the legislature intended that which would work no injustice." Lord Blackburn expressed the same view in *Rothes* v. *Kirkcaldy Waterworks Commissioners*, 7 App. Cas. 702, when he said, "I quite agree that no court is entitled to depart from the intention of the legislature as appearing from the words of the act, because it is thought unreasonable, but when two constructions are open, the court may adopt the more reasonable of the two."

In some cases, when the occasion justifies it, the court goes so far as to modify the language of the enactment, or add to it, in order to give it a reasonable construction.

In *Hollingworth* v. *Palmer*, 4 Ex. 267, Parke, B., after reading section 16 of 7 & 8 Vic., c. 112, which was to be construed, said at p. 281: "This section is certainly most incorrectly worded, and it is, therefore, necessary to modify its language in order to give it a reasonable construction. The rule we have always followed of late years is to construe statutes, like all other written instruments, according to the ordinary grammatical sense of the words used, and if they appear contrary to, or irreconcilable with, the expressed intention of the legislature, or involve any absurdity or any inconsistency in their provisions, they must be modified so as to obviate that inconvenience, and no further."

In *Tennant* v. *Howatson*, 13 App. Cas. 489, the words, "Nothing contained in this ordinance," were held to mean "Nothing contained in the two preceding sections of this ordinance."

In this case, however, we have not to resort to any such modification of the language of the enactment, nor to any addition thereto. In construing the provision

questioned, which provision is clearly susceptible of more than one construction, it is not difficult to see which construction is more reasonable and more conducive to justice. The Roman catholics had by practice denominational schools before the union; during nineteen years since the union, and until the new school act was passed, they had said denominational schools recognized and authorized by law. They declare, under the oath of the archbishop of St. Boniface, the head of their church in this province, that, on the principle of their religious belief, and on the ground of conscience, they consider the schools provided for by the new schools act, not fit for the purpose of educating their children, and that their said children will not attend said schools, that rather than countenance such schools, they will have to establish, support, and maintain schools in accordance with their principles and faith.

If the narrower construction of the provision in question is adopted, they will have to tax themselves to support their own schools, the only schools which in conscience they can send their children to, and they will have, besides, to be taxed and to pay for the support of the other schools, schools from which the non-catholics will derive all benefit, and the catholics themselves no benefit whatever. Moreover, the legislative grant, which is the people's money, contributed by catholic as well as by other citizens, will be exclusively devoted to assist the other schools, while the catholics will not get their proportionate share to maintain their own schools. Would not that be most unreasonable and a great injustice to the Roman catholics, while the other portion of the community would get more than naturally they would be reasonably and justly entitled to? Now, if the broader and more equitable construction prevail, the Roman catholics, in being allowed to have their schools maintained and recognized by law, would get nothing more than strict and fair justice, and the non-catholics would suffer no injustice.

Protestants and catholics have different views and different principles as to the education which children should receive in elementary schools. Some protestants are adverse to any religious teaching in public schools, and hold that such teaching should be purely secular; others, and, I think, a larger proportion of them, are desirous that the general principles of christianity be taught, and that there should be some scriptural reading, and other exercises of a religious character. As to Roman catholics, they go farther. While believing that the teaching of secular subjects required by the state should be given due consideration, and full effect, they hold, as a matter of conscience, based on the principles of their faith, that their children should also be taught in the doctrines and tenets of their church, and that the religious exercises should be those of the Roman catholic church, and no other.

As stated by the archbishop of St. Boniface in his affidavit filed, "protestants are satisfied with the system of education provided for by the public schools act, and are perfectly willing to send their children to the schools established and provided for by the said act. Such schools are, in fact, similar to the schools maintained by the protestants under the legislation in force immediately prior to the passage of the said act." The archbishop is, in that, substantially corroborated by the Reverend Professor Bryce who says, in his affidavit filed, that the presbyterians are able to unite with their fellow-christians of other churches in having taught in the public schools (which they desire to be taught by christian teachers) the subjects of secular education. It is easy to understand why the various denominations of protestants can unite in a common system of public schools, and why Roman catholics cannot similarly join their protestant fellow-citizens. Protestants are more or less divided between themselves on certain matters of doctrine, and on some formal precepts of a dogmatic character; but a very large number of general principles and a considerable amount of doctrinal tenets of christianity are held in common by all of them. If they differ on certain particular points, they agree on a great many things. In school matters they practically entertain the same views and find no difficulty in uniting together. But the differences between the Roman catholics and the various denominations of protestants are wide and substantial, and include most essential points of dogma and discipline. It is not an uncommon thing, in this country at least, to see protestant ministers of different denominations exchange pulpits on certain occasions. No one would even think of seeing the same thing done between a protestant

minister and a Roman catholic priest. The same characteristic differences are held by catholics to exist on the school question. While some protestants may not be able to see why catholics should have conscientious objections to send their children to public schools taught by protestant teachers, catholics have actually such conscientious objections, and hold that they are insuperable. A man's conscience is a thing of such a personal and idiosyncratic character that it cannot be measured by the particular feelings and dictations of any other man's conscience.

The state may hold that ignorance is an evil to be remedied by public instruction and may see that certain secular subjects, which are known to form the basis of a proper education, be taught in schools, assisted by public money. But in a community composed of different elements, the state should not ignore the particular condition, wants and just claims of an important class of citizens, especially when such important class are in every respect loyal and law-abiding subjects, and there is nothing in their wants and claims clashing with the rights of other classes, or contrary to or conflicting with, the letter, the spirit or the true principles of the constitution. The liberty of conscience is one of the fundamental principles of our constitution. What the Roman catholics ask in claiming the right to maintain their denominational schools is only the carrying out, to the full extent, of that fundamental principle. The desirability of having religious instruction combined with secular teaching in schools is, as stated by my brother Killam, considered as of the utmost importance by very many protestants as well as by Roman catholics.

I may, on this point, take some brief references from a very important public document—the final report of the commissioners appointed to enquire into the elementary schools act, England and Wales. The commission was issued by her majesty the Queen on the 15th January, 1886, to twenty-four distinguished men of England, chosen for their learning, their ability and their high social position, the very large proportion of whom were protestants of various denominations. The enquiry was very extensive, and lasted until June, 1888, when the final report was made, and afterwards presented by command of her majesty to both houses of parliament.

At page 112 of their said report, the commissioners say: "Upon the importance of giving religious as well as moral instruction, as part of the teaching in day public elementary schools, much evidence was brought before us." And at page 113: "All the evidence is practically unanimous as to the desire of the parents for the religious and moral training of their children."

At page 124, "We are convinced that if the state were to secularize elementary education, it would be in violation of the wishes of the parents, whose views on such a matter are, we think, entitled to the first consideration. Many children would have no other opportunity of being taught the elementary doctrines of christianity, as they do not attend sunday schools, and their parents, in the opinion of a number of witnesses, are quite unable to teach them."

Such were the views of the commissioners as to the religious teaching in schools.

As to the conscience question, the commissioners say, at p. 121: "While we are most anxious that conscientious objections of parents to religious teachings and observances in the case of children, should be most strictly respected, and that no child should, under any circumstances, receive any such training contrary to a parent's wishes, we feel bound to state that a parent's conscientious feelings may be equally injured, and should be equally respected and provided for, in the case where he is compelled by law to send his child for all his school time to a school where he can receive no religious teaching."

At page 127, "After hearing the arguments for a wholly secular education we have come to the following conclusions: * * * * (4.) That inasmuch as parents are compelled to send their children to schools, it is just and desirable that, as far as possible they should be enabled to send them to a school suitable to their religious connections or preferences." The same thing is repeated as the 69th of their concluding recommendations at page 213 of the report.

An argument has been advanced, in this country and elsewhere, that state aid given to schools where religious teaching is carried on, would be an endowment to religious

education, which the state should not undertake to do. Such, however, is not the opinion of the commissioners; the report says, at page 119: "We cannot concur in the view that the state may be constructively regarded as endowing religious education when, under these conditions, it pays annual grants for secular education in aid of voluntary local effort to schools in which religious instruction forms part of the programme."

As to the religious teaching in schools, the opinion of five of the commissioners who made a special report is thus expressed at page 244: "We recognize that for the great mass of the people of this country, religious and moral teaching are most intimately connected and that in our judgment the effectiveness of the latter depends to a very large extent upon religious sanctions. We think that the present liberty of religious teaching recognized by law for local managers, is an ample security, that so long as the prevalent opinion of the country remains unchanged, the education of the children and the formation of their character will be based upon those principles which are dear to the mass of the people."

The above quotations show that the views of the Roman catholics of this country on religious teaching in schools are not much different from those entertained by the mass, as well as by the cultured portion of the people of England, protestants as well as Roman catholics.

On the grounds hereinbefore mentioned, and on the authorities cited, I believe that the re-enactment in the Manitoba act of the main provisions of the 93rd section of the British North America act, was for the purpose of insuring, under the constitution of the new province, to any class of persons who might desire it, the maintenance of the denominational schools existing at the time of the union; that the words "or practice," added to the first sub-section of the 22nd section of the Manitoba act, can have no other meaning, and should receive no other construction than that they were clearly intended by the legislature to give a legal status to the said denominational schools, which, as a matter of fact, were known to exist at the time, though not recognized by any law; that the said interpretation should be adopted on the ground, amongst others, that if the Roman catholics are allowed to have their denominational schools maintained under the law, no injustice or detriment whatever will result to the other classes of the population, whilst otherwise, by being obliged to establish and support schools to which they could conscientiously send their children, and paying at the same time for schools from which they cannot and will not derive any benefit, the Roman catholics will suffer a very great injustice, and the legislature, by inserting the words "or practice," intended to provide, and in fact did provide against such injustice being done to the catholic minority in this province.

I am, therefore, led to the conclusion that the public schools act of last session, by which the denominational schools, heretofore existing, are legislated out of legal existence, prejudicially affects the privilege which the Roman catholics had by practice at the time of the union with respect to denominational schools; that, in consequence the said public school act is *ultra vires* of the provincial legislature, and that the two by-laws in question passed in compliance with the provisions of the said act, are illegal and should be quashed.

In my opinion, the order of my brother Killam should be reversed, and the summons made absolute, with costs.

BAIN, J.

This is an application to reverse an order made by Killam, J., dismissing an application made under section 258 of the municipal act, to quash the by-laws of the city of Winnipeg, numbered 480 and 483, authorising an assessment for city and school purposes in the city for the current municipal year. These by-laws enact that a rate or tax of two cents on the dollar shall be levied and collected on the whole assessed value of the real and personal property in the city, of which rate 4½ mills on the dollar is to be for school expenditure, and the balance for interest on debentures and ordinary municipal expenditure. The application to quash the by-laws is made on the ground

that they are illegal, "because by the said by-laws the amounts to be levied for school purposes for protestant and Roman catholic schools are united, and one rate levied upon protestants and Roman catholics alike for the whole sum." It is not questioned that the public schools act, 53 Vic,. c. 31, M. 1890, authorizes the assessment or levy that the by-laws provide for, but is contended that the act itself, providing as it does for the establishment of a provincial system of free and non-sectarian public schools, for the support of which all taxable property is made liable to be assessed and taxed, is *ultra vires* of the provincial legislature, and that the previous school act, which the act assumed to repeal, is still in force, and that under it the taxes for the support of protestant and Roman catholic schools must be levied separately on the property of protestants and Roman catholics respectively.

Under the school acts in force in the province previous to the passing of the public schools act of 1890, there were two distinct sets of public or common schools, the one set protestant and the other Roman catholic. The board of education, which had the general management and control of the public schools, was divided into two sections, one composed of all the protestant members, and one of the Roman catholic members, and each section had its own superintendent. The school districts were designated "protestant" or "Roman catholic," as the case might be; the protestant schools were under the immediate control of trustees elected by the protestant rate-payers of the district, and the catholic schools, in the same way, were under the control of trustees elected by the Roman catholic rate-payers; and it was provided that the rate-payers of a district should pay the assessments that were required to supplement the legislative grant to the schools of their own denomination, and that in no case should a protestant rate-payer be obliged to pay for a Roman catholic school, or a catholic ratepayer for a protestant school.

The public schools act of 1890 repealed all former school acts, and established in place of the two sets of schools that had existed under these acts, a system of free and non-sectarian public schools, for the support of which all taxable property is liable to be taxed. It is under the authority that this act gives, that the by-laws in question were enacted; and the question that arises in the application to quash them is the exceedingly grave and important one, whether or not the legislature, in passing this act, has exceeded the powers and jurisdiction conferred upon it by the constitution of the province.

The power of the provincial legislature to make laws concerning education is derived from section 22 of 33 Vic., c. 3, D., usually known as the Manitoba act. By section 2 of this act, the provisions of the British North America act, 1867, except those of them that specially applied to or affected only individual provinces, and except so far also as they were varied by the Manitoba act, were made applicable to the new province, as if it had been one of the provinces that were originally united to form the dominion. By section 93 of the British North America act it is provided that: "In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions: (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have by law in the province at the union." Then a sub-section applies to the province of Quebec only, and extends to the dissentient schools in that province, whether protestant or catholic, all the powers and privileges that at the union the law of Upper Canada conferred on the separate schools there, and the third sub-section provides that, "Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the governor-general-in-council from any act or decision of any provincial authority affecting any right or privilege of the protestant or Roman catholic minority of the queen's subjects in relation to education." A fourth sub-section provides that the parliament of Canada may make remedial laws for the due execution of the provisions of the section and of any decision of the governor-general-in-council under it.

The 22nd section of the Manitoba act provides that "In and for the province the said legislature may exclusively make laws in relation to education, subject and

according to the following provisions: (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union. (2) An appeal shall lie to the governor general in council from any act or decision of the legislature of the province, or of any provincial authority affecting any right or privilege of the protestant or Roman catholic minority of the queen's subjects in relation to education," and a third sub-section is in the same terms as sub-section 4 of the 93rd section of the British North America act. This section of the Manitoba act was evidently intended to deal with and to cover the whole subject of education in the province; and I agree with my brother Killam that the powers conferred by this section cannot be either enlarged or restricted by anything that is in the 93rd section of the British North America act, and that the provisions of the 93rd section are material in this case, only in so far as they will assist us to arrive at the proper construction of the section of the Manitoba act. It is evident that the section in the Manitoba act was based on the 93rd section. But there are important differences, evidently made with some more or less definite intention; and a comparison of the two enactments can hardly fail to assist us in seeking to arrive at the intention expressed in section 22.

The general power of the legislature to make laws in relation to education is subject then to the restriction that "nothing in any such law shall prejudicially affect any right or privilege in respect to denominational schools, which any class of persons have by law or practice at the union." This sub-section differs from the 1st sub-section of section 93, in the British North America act, only by the addition of the words "or practice;" and as, prior to the union, there were no laws in force in the territory, which now forms the province, on the subject of education or schools, denominational or otherwise, the reason of the insertion of the words "or practice" is obvious.

The contention of the applicant is that Roman catholics, as "a class of persons," had, by practice, prior to the union, certain rights and privileges with respect to denominational schools; and that the public schools act, by establishing a system of free and public schools, and by making all assessable property of Roman catholics, as well as of all others, liable to be taxed for the support of these schools, prejudicially affects these rights, and that, therefore, the act is *ultra vires* and invalid, and that the school act and the school system it purports to repeal and abolish, are still in force. These rights and privileges, that it is claimed Roman catholics had before the union, by practice, are formulated by the learned counsel for the applicant to be, first, the right to be separate from the rest of the community with reference to education; second, the right to compete on equal terms with other schools; and third, the immunity from contributing to the support of any other schools than their own; and this last is claimed to be rather in the nature of a privilege than a right.

The reason why parliament made use of the expression a "right or privilege in practice," is more obvious, perhaps, than the precise meaning that should be given to the expression it has used. On the argument, no careful attention was given by any of the learned counsel to the consideration of the meaning of these somewhat vague and indefinite words, but in examining the question raised by the application, it is necessary to fix, as far as possible, and have in mind what is meant by the words, in order to determine if the evidence shows that Roman catholics, as a "class of persons," had the rights and privileges claimed, or any other rights and privileges, in practice, with respect to denominational schools; and if it appears that they had, then it will be further necessary to inquire if they have been prejudicially affected by the act in question.

In his affidavit, filed in support of the application, his grace the archbishop of St. Boniface, states that, prior to the passage of the Manitoba act, there existed in the territory now constituting the province of Manitoba, a number of effective schools for children. These schools were denominational schools, some of them being regulated and controlled by the Roman catholic church, and others by various protestant denominations. The means necessary for the support of the Roman catholic schools were supplied to some extent by fees paid by some of the children who attended the schools, and the rest was paid out of the funds of the church, contributed by its members. During

the period referred to, Roman catholics had no interest in or control over the schools of the protestant denominations, and the members of the protestant denominations had no interest in or control over the schools of the Roman catholics. There were no public schools in the sense of state schools. The members of the Roman catholic church supplied the schools of their own church for the benefit of Roman catholic children, and were not under obligation to, and did not contribute to the support of any other schools. His grace adds: "In the matter of education, therefore, during the period referred to Roman catholics were, as a matter of custom and practice, separate from the rest of the community, and their schools were all conducted according to the distinctive views and beliefs of Roman catholics as herein set forth."

The affidavits of Alex. Polson and John Sutherland, filed in reply, merely supplement his grace's affidavit by stating "that schools which existed prior to the province of Manitoba entering confederation were purely private schools, and were not in any way subject to public control, nor did they in any way receive public support. No school taxes were collected by any authority, prior to the province entering confederation, and there were no means by which any person could be forced by law to support any of said private schools." The affidavits do not show how these schools were established; whether the Roman catholic and the various protestant denominations, as churches, established the schools and appointed teachers and directly controlled them or whether they were established by individuals as private enterprises, and were conducted in accordance with the religious views of the denomination to which the individual proprietors belonged and to which they looked for support. However, it is stated that the schools were denominational ones, and that some of them were controlled by the Roman catholic church and the others by various protestant denominations. On these facts then, what "rights or privileges in practice" are Roman catholics shown to have had in respect to their schools?

I find myself unable to see how it can be said that they had any *privilege* in respect of their denominational schools, in any strict, or even popular, sense of the word "privilege." It is not shown, or claimed, that they enjoyed any benefit or advantage in respect of their schools that the various other classes of persons who had established schools did not likewise enjoy in respect of theirs, or that any other individual might not have enjoyed had he chosen to open a school. They were under no obligation, indeed, to contribute to the support of the schools of the other denominations, nor for that matter, to contribute to the support of their own schools, but in this respect all other classes of persons, and individuals as well, were precisely in the same position and enjoyed the same immunity; and that which is the common immunity and in the common and equal enjoyment of all cannot properly be said to be a "privilege" of any one person or class.

I may say here that I entirely agree with my brother Killam in holding that the schools that are established by the public schools act are not "denominational" schools. The advisory board is given power to prescribe forms of religious exercises to be used in the schools, but no pupil is required to attend these exercises against the wish of his parents or guardian. The 8th section of the act expressly provides that the schools shall be entirely non-sectarian, and that no religious exercises shall be allowed in them except that prescribed by the advisory board; and we must assume that the board will prescribe forms of religious exercises that shall be entirely non-sectarian. It is a matter of public knowledge that some of the leading and most representative men of some of the protestant denominations object to these schools, and, as his grace says in the affidavit, "would like education to be of a more distinctly religious character than that provided for by the said act." I quite admit, however, that the objection on the ground of the absence of an education that is distinctly religious will be felt much less by protestants than by Roman catholics, but I cannot hold that the non-sectarian religious exercises that the act authorizes, or even that the absence of all religious exercises or teaching in the schools makes, or would make, them protestant or denominational schools.

It is to be observed, too, that in this sub-section 1, parliament was not thinking only of the two great divisions of Roman catholics and protestants, but had in mind

and intended to preserve the rights and privileges that other classes of persons besides catholics or protestants had, or might have, in respect of denominational schools. This was expressly so held as regards the corresponding sub-section in the 93rd section of the British North America act in *Exparte Renaud* 1 Pugs. N.B.R, 273, usually known as the New Brunswick school case; and, as the present learned chief justice of the supreme court said in that case, "We think that the term 'denomination' or 'denominational,' as generally used, is in its popular sense more frequently applied to the different denominations of protestants than to the church of Rome; and that the most reasonable inference is that sub-section 1 was intended to mean just what it expresses, viz.: that 'any,' that is, every 'class of persons' having any right or privilege in respect to denominational schools, whether such class should be one of the numerous denominations of protestants or Roman catholics, should be protected in such rights." For an example of the use of the word "denomination" in the sense ascribed to it by the chief justice, we have only to turn to paragraph 3 of the affidavit of his grace the archbishop, where he speaks of some of the schools having been "controlled by the Roman catholic church and others by various protestant denominations."

A recent learned writer on jurisprudence (*Holland, Elements of Jurisprudence*, 4th Ed., 70) has defined a "legal right," as "a capacity residing in one man of controlling with the assistance of the state, the action of others." But from the circumstances of the case, as well as from the addition of the words "by practice" to the sub-section as it is in the British North America act, it is evident, I think, that parliament intended that the sub-section in the Manitoba act should apply to other rights than legal ones. At page 69, the author, whose definition of a "legal right" I have given, says: "When a man is said to have a right to do anything, or over anything, or to be treated in a particular manner, what is meant is that public opinion would see him do the act, or make use of the thing, or be treated in that particular manner, with approbation, or, at least, with acquiescence; but would reprobate the conduct of anyone who should prevent him from doing the act, or making use of the thing, or should fail to treat him in that particular way. A "right" is thus the name given to the advantage a man has when he is so circumstanced that a general feeling of approval, or at least of acquiescence, results when he does or abstains from doing certain acts, and when other people act or forbear to act in accordance with his wishes; while a general feeling of disapproval results when anyone prevents him from so doing or abstaining at his pleasure, or refuses to act in accordance with his wishes." A "right" in this sense is nothing more than a "moral right," and Professor Holland so terms it and distinguishes it from a "legal right." In the case of *Fearon* v. *Mitchell*, L. R. 7 Q.B., 690, to which the chief justice has called my attention, the court, in construing a section that provided that no market should be established "so as to interfere with any rights, powers or privileges enjoyed within the district by any person, without his consent," held that the word "rights," especially when taken in conjunction with the words "powers or privileges," must mean rights acquired adversely to the rest of the world, and peculiar to the individual, and did not apply to a right which an individual enjoyed in common with the rest of her majesty's subjects. Had the words "right or privilege" stood alone in the sub-section, this is doubtless the only meaning that could have been properly given to them, but from the addition of the words "by practice," and from the state of circumstances in reference to which parliament was legislating, I am disposed to think the words were used in their widest signification, and that the "rights" that parliament had in view were in the nature of those that Professor Holland describes as "moral rights.' What was meant, then, by the sub-section was, I think, that nothing in any law to be passed by the legislature relating to education was to prejudicially affect anything that any class of persons had been in fact, and generally in the habit of doing with respect to denominational schools, with the acquiescence, implied or expressed, of the rest of the community. A view of the meaning of the sub-section more favourable to the contention of the applicant cannot possibly be taken.

The affidavits show that before the union, private schools regulated and controlled by the Roman catholic church, had been established and maintained. These schools are

properly termed denominational schools, and they were it is to be inferred, established and maintained with the acquiescence of the rest of the community. If then I am not giving too wide a meaning to the term "right or practice," it must be held that it has been established that Roman catholics had the right to establish and maintain denominational schools, and, of course, to attend them, or send their children to them, if they saw fit.

From the fact that there were these denominational schools, and that they were all conducted according to the distinctive views and beliefs of Roman catholics, Roman catholic parents would naturally send their children to these schools rather than to those which were conducted by the various protestant denominations, which also, we may assume, were conducted according to the distinctive religious views of the denominations that controlled them; and the deduction of his grace the archbishop, is doubtless entirely correct when he says in the 6th paragraph of his affidavit, that, "in the matter of education, therefore, during the period referred to, Roman catholics were, as a matter of custom and practice, separate from the rest of the community." But this, it seems to me, falls far short of establishing that Roman catholics had a distinct and positive right to be separate in matters of education; and to say that they were thus more or less separate, is only to say in other words that they had the right to maintain denominational schools and send their children to them, if they saw fit. Their being separate was only an incident of their right to maintain the schools.

The other right that the counsel for the applicant claims that Roman catholics had at the union by practice, was the right to compete on equal terms with protestants in maintaining their denominational schools. All the schools were private enterprises, and all were upon the same footing and competed for the support of the public on equal terms, as far as any influence external to the class of persons who controlled the schools was concerned, and no one will question the correctness of the proposition advanced. The different schools had the right to compete with one another on equal terms, just as we might say that a merchant or tradesman has the right to compete with other merchants or tradesmen on equal terms. But this proposition seems to have been advanced with the idea that the schools established under the public schools act are denominational or protestant schools; and on this point I have already expressed my opinion.

It will be admitted that it is the imperative duty of every state or civil government to provide means by which, at all events, elementary and ordinary education shall be placed within the reach of every child in the community. It is recognized that it is a danger to the state that any portion of its citizens should grow up in ignorance, and that a state is justified in imposing taxation to provide means by which this danger will be prevented or lessened. Under the constitution of this province, the power to make laws in relation to education has been given exclusively to the provincial legislature. To it has also been given the power to impose taxation for provincial purposes; and in giving these powers, parliament clearly contemplated and intended that some system of public instruction and education would be provided by the legislature, and that, as far as should be found necessary, taxation would be imposed to provide and support such a system. The power of the legislature to make laws in relation to education was made subject only to one qualification or restriction, that nothing in such laws should prejudicially affect any right or privilege with respect to denominational schools which any class of persons had by law or practice in the province at the union. The legislature has by the act in question provided for the establishment of a system of public, free and non-sectarian or undenominational schools, at which every child in the province can attend, and has made all taxable property in the province liable to be taxed for the support of these schools. No one, however, can be compelled to attend these schools if he does not wish to, and there is nothing in the act that will in any way prevent any person, or class of persons, from establishing schools that shall be strictly denominational, and from competing on equal terms with other denominational schools that may be established. The rights then that Roman catholics had before the union to establish denominational schools and to attend them, and to compete, as regards their

schools, on equal terms with other denominations, or protestants generally, has not been taken away, and can be exercised now as fully as it could have been before the union. The attendance at these schools, it is true, may be prejudicially affected by the competition of the free public schools established under the act, in the same way that the business of a merchant, who has a right to carry on business, may be affected by another merchant opening a store in the exercise of a similar right, but the right itself is as little affected in the one case as the other. Nor do I think these rights in respect of denominational schools or any other right or privilege that on the evidence could possibly be claimed, can be said to be prejudicially affected by the fact that the property of Roman catholics, in common with the property of everyone else, is made liable to be taxed in support of the public, undenominational schools that the act establishes. No right in respect to such schools is affected by this taxation; the taxation to support these public schools is for a provincial purpose, and if Roman catholics, as is said, are less able to support their denominational schools by whatever amount of taxes they have to pay to the public schools, the same may be said of any other tax that is imposed by the legislature for provincial or municipal purposes. On the question of what is meant by the expression, "prejudicially affect any right," the judgment of the court in the New Brunswick school case, in which the court had to consider the effect of these words in the section of the British North America act, is instructive.

The parish schools act of New Brunswick, which was in force in that province when the province entered confederation, secured to all children whose parents did not object, the reading of the bible in the parish schools, and expressly provided that the bible, when read in the parish schools by Roman catholic children, should, if required by parents, be the Douay version, without note or comment. But the common schools act, 1871, which repealed the parish schools act, omitted this provision and declared that all schools conducted under its provision should be non-sectarian, and the board of education, under the powers given to it by the act, made the regulation that "it shall be the privilege of every teacher to open and close the school by reading a portion of scripture (out of the common or Douay version, as he may prefer), and by offering the Lord's prayer." It is evident therefore, that Roman catholics were thus placed in a very different position as regards the actual enjoyment of the right or privilege they had to insist that the Douay version should be read to their children, from that they were in before the passing of the common schools act, but the court held, that if this were a right or privilege in respect of denominational schools within the meaning of the sub-section, it was not taken away, although it was not protected by any express enactment, and that, therefore, the right could not be said to have been prejudicially affected so as to make the act invalid.

But, it is said, Roman catholics do not claim that the effect of the sub-section is to render them and their property for ever exempt from taxation for the support of public schools, and they admit that they are liable and willing to be taxed for the support of Roman catholic public schools as they were under the school system that the present act has abolished; and the principal part of the persuasive argument of the counsel for the applicant was devoted to an endeavour to show that having regard to the history of the controversy with respect to denominational schools in the older provinces, parliament could have intended nothing else by the provisions of section 22 than to confirm to Roman catholics in Manitoba the same rights and privileges in regard to separate schools that had been won for the minority in Upper Canada, and that were not only confirmed to Ontario, but were extended to Quebec, by the second sub-section of the 93rd section of the British North America act, and that the court should give effect to what we must thus assume, was the intention and policy of parliament. It is urged, too, that if sub-section 1 is to have no more effect than to preserve the right to maintain denominational schools, it is useless and inoperative, and that parliament would never have thought it worth while to make an enactment merely to preserve this right, as it cannot be supposed that any legislature would ever think of taking it away. It is satisfactory to find under the circumstances, that there is still this confidence on the part of the applicant in the fairness and liberality of those who may from time to time form the

majority of the legislature, but admitting that his confidence is well founded, and that the sub-section will never be required to preserve the right in question, it does not follow that it must be given the wider operation contended for.

It is, of course, necessary for anyone who is interpreting and construing a statute to make himself acquainted, as far as he can, with the history of the enactment and the external circumstances which led to its being passed, so that he may be so far in the place of those whose words he is interpreting that he can see what the words they used relate to. But "the external circumstances which may thus be referred to do not, however, justify a departure from every meaning of the language of the act. Their function is limited to suggesting a key to the true sense when the words are fairly open to more than one; and they are to be borne in mind with the view of applying the language to what was intended and of not extending it to what was not intended." (*Maxwell* on *Statutes*, p. 32.) And as Sir William Ritchie said in *Exparte Renaud*, "It is a well established canon of construction that an act is to be construed according to the ordinary and grammatical sense of its language, if precise and unambiguous; and it is likewise a rule, established by the highest appellate authority, that the language of a statute, taken in its plain, ordinary sense, and not its policy or supposed intention, is the safer guide in construing its enactments." The question for a court always is, not what parliament meant, but what its language means.

But looking at the history of the controversy in regard to separate schools, and at all the external circumstances that we are asked to consider, it is very far from clear to my mind that parliament meant anything more by the provisions of section 22 than the language that it used naturally expresses. It will occur to everyone that, had it been the intention to give and confirm to Roman catholics, or any other class of persons in the new province, the right to have separate schools, and the immunity from supporting any but their own schools, the right would have been given in explicit terms. It was well known what agitation and bitter ill-feeling the question had caused in Upper Canada before it was settled; and if parliament had intended to settle it once for all for Manitoba, I find it impossible to think that, with the provisions of the British North America act that settled it for Ontario and Quebec before them, and from which section 22 was adapted, it would not have inserted a similar express provision in the Manitoba act. But it has not done so, and the inference I would draw from these external circumstances, as well as from the language of the section, is that parliament intended to leave the question to be settled by the people of the province themselves, as it had been by the people of the provinces in which a settlement had been arrived at, making only the natural and just restriction that existing rights in respect of denominational schools should not be prejudicially affected by any laws that the legislature should make. As we have seen, "various protestant denominations" were exactly in the same position as regards denominational schools as Roman catholics were, and if Roman catholics can claim the right to have separate schools and to support only their own schools, so can each one of these protestant denominations. But in the absence of any express and explicit enactment to this effect, it is hard to believe that it could have been the intention or policy of parliament to impose such a state of affairs upon the new province.

The act of the legislature that we are asked to hold to be unconstitutional and invalid is one that deals with a subject over which the legislature, by the constitution of the province, has been given exclusive jurisdiction, subject only, as far as the courts are concerned, to the one restriction or limitation that the laws to be made by the legislature shall not prejudicially affect these rights in respect of denominational schools. With the policy of the legislature, the court has nothing to do, and in dealing with such cases, the presumption of the court should always be, I think, in favour of the constitutionality of the act in question; and in this case the court should not undertake to declare the act invalid unless it is established beyond reasonable doubt that the legislature has exceeded its jurisdiction by contravening and infringing upon this restriction or qualification. The rule that I have indicated is the one that is followed in the supreme court of the United States, and on this subject I cannot do better than

adopt the language of Chief Justice Marshall in *Fletcher* v. *Peck*, 6 Cranch, 128, "The question," he says, "whether a law be void for its repugnancy to the constitution is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station could it be unmindful of the solemn obliga- which that station imposes; but it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a strong and clear conviction of their incompatibility with each other."

I think my brother Killam was right in dismissing the application to quash the by-laws, and I agree with the chief justice that this application should be dismissed with costs.

In the Queen's Bench.

In the matter of an application to quash by-law 480 and 483 of the city of Winnipeg.

Upon the application of John Kelly Barrett, a resident ratepayer of the city of Winnipeg, by the way of appeal from the order or decision of Mr. Justice Killam, pronounced herein on the twenty-fourth day of November last past, dismissing with costs the summons granted herein on the seventh day of October last past, to quash the by-laws above referred to, upon hearing read the said summons, and the affidavits and papers filed, and upon hearing counsel on behalf of the applicant and of the said the city of Winnipeg.

It is ordered that the said appeal be and the same is hereby dismissed, and the said order pronounced herein, and dated the twenty-fourth day of November last past, be affirmed, with costs of this appeal to be paid by the said applicant to the said the city of Winnipeg forthwith after taxation thereof by the master.

Dated the 2nd day of February, A.D. 1891.

By the court.

G. H. WALKER,
Prothonotary.

In the Queen's Bench.

In the matter of an application to quash by-laws 480 and 483 of the city of Winnipeg.

Upon the application of John Kelly Barrett, the plaintiff herein, and upon reading the consent of the defendants, the city of Winnipeg, and a bond for security for the costs of the plaintiff's appeal to the supreme court of Canada, and other papers filed herein by the said plaintiff, I do order that the said bond be and the same is, hereby approved, and that the appeal of the above named John Kelly Barrett in this cause from the judgment of this court *in banc* pronounced herein on the second day of February, A.D. 1891, to the supreme court of Canada be, and the same is hereby allowed.

And I do further order that execution herein be staid, pending the said appeal to the supreme court of Canada.

Dated at chambers, this seventh day of March, A.D. 1891.

T. W. TAYLOR, C. J.